

**ALASKA LEGISLATURE**

**2689**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**



## Welcome to eSmokes.com

**Domestic, Foreign, & Discount Cigarettes, Premium and Machine Made Cigars** - eSmokes provides the greatest selection of discount Cigarettes, Cigars and Tobacco products on the web! Discount Cigarettes & Cigars prices will save you money! For cheap and quality Cigarettes, Cigars, and Value Brands. Our website is designed to make your Cigarettes & Cigars shopping experience convenient & satisfying. Our customer service team is available 24 hours per week & is the best you will find anywhere. Our website has been voted the #1 Online Cigarette Retailer 5 years in a row!

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Voted "Best Online Cigarette Retailer" 5 years in a row!



**Premium Cigarettes**  
From: \$24.99  
American made cigarettes at discount prices

[Browse Premium](#)



**Generic Cigarettes**  
From: \$19.59  
Wide selection of cheap cigarettes online!

[Browse Generic](#)



**Value Cigarettes**  
From: \$10.99  
Great selection of discount cigarettes online!

[Browse Value](#)



**Foreign / Specialty Cigarettes**  
The widest selection and lowest prices!

[Browse Foreign](#)



**Premium Cigars**  
The world's finest cigars at incredible prices!

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**Machine Made Cigars**  
Value and variety from the world's finest tobacco!

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**Smokeless Products**  
Best price selection & freshest products online!

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**Specialty Products**  
Rolling Papers, Zippo Lighters, and much more!

[Browse Specialty](#)

YOU MUST BE 21 YEARS OF AGE OR OLDER TO PURCHASE TOBACCO PRODUCTS FROM eSmokes.com. All new accounts will be required to provide a valid government issued picture ID and signature when receiving their initial delivery.

SURGEON GENERAL'S WARNING: Cigarette Smoking Causes Cancer and Complications. Quitting Now Greatly Reduces Serious Risks to Your Health.

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Win a Sony 4 Plasma Flat 5 TV!  
A brilliant picture screen 30" size and thick! The draw is held on Sept 15th 2003. Enter your email at below.

ENTER



Special Savings  
Click Here for



**CIGARETTESONLY.COM**  
*Your Friend In The Cigarette Business!*



You must be at least 18 years old to purchase cigarettes from our on-line store.



Please select an option below and acknowledge that you are at least 18 years old...

**YES**  
I am at least 18 years old

**NO**  
I am not older than 18 years old

**Free Shipping**  
**on Orders of 5 Cartons or More**

**CIGARETTESONLY.COM**  
*Your Friend In The Cigarette Business!*

**FREE SHIPPING**  
**on orders of 5 cartons or more**  
**including Hawaii & Alaska**

## FAQ

### Is online ordering safe?

Yes, very safe. Your confidential information is encrypted when sent to us via the internet. It is very difficult if not impossible to break the encryption code. Additionally, we do not store your credit card information on our database, you must submit it every time.

### If I give you my name and address, do you pass that information on to someone else?

Never, the information you give us online is confidential. We do not sell or share our customer list with anyone. NWNP processes the orders and the credit card payments and does not report any sales activity to any State taxing authority and they are not required to do so.

### Isn't mailing cigarettes illegal?

If you are at least 18 years of age, and the cigarettes you are purchasing are for personal use only, it is perfectly legal to have cigarettes mailed to you.

### Why are the cigarettes at cigarettesonly.com so cheap?

Cigarettesonly.com is shipping from the Seneca Indian Reservation in upstate New York. As a Seneca Indian owned business, there are no state taxes.

### How will I know that you have received my order?

We will send you a confirmation E-mail to let you know that your order was received and is being processed.

### How long will it take to receive my order?

All orders are shipped via UPS or US Priority Mail within 48 hours. Please allow 4-7 business days for delivery.

### What are the minimum and maximum order quantities?

You can order a minimum of 1 carton at a time. The Maximum legal limit is 149 cartons per day.

### Can I change my order at any time?

Orders are processed typically the same day they are placed. We can change an order only if it has not been shipped out yet.

### What is your return policy?

We have a 30 day satisfaction guarantee. You can return any unopened items for any reason and we will exchange the product or give a refund for the cost of the product. Customer is responsible for shipping charges. CigarettesOnly is responsible for shipping charges if the return is a result of our error.

### Where do I send my Check or Money Order?

\*\* When sending a money order or a personal check, please include a copy of a valid ID\*\*.

**NWNP**

**PO Box 246**

**Brant, NY 14027-0246**

**\*Make Checks payable to NWNP**

\*\* When sending a money order or a personal check, please include a copy of a valid ID\*\*.

### Where do I send my returns?

Cigarettesonly.com

C/O NWNP

1525 Cayuga Road

## Specials

GT One - \$12.50

Native - \$10.95

Seneca - \$12.95

Usa Gold - \$17.50

Irving, NY 14081

**What are your shipping charges?**

Our shipping rates to the U.S. including Hawaii and Alaska:

- 1-4 items \$6.00 Total
- 5 items or more FREE
- A charge of \$13.50 up to 4 cartons. \$1.50 per each additional carton for 3-day UPS shipping.
- A charge of \$16.00 up to 4 cartons. \$1.50 per each additional carton for 2-day UPS shipping.
- A charge of \$31.00 up to 4 cartons. \$1.50 per each additional carton for Next Day UPS shipping.

**Do you ship outside of the United States?**

No, Currently we do not ship internationally.

**Can I get my cigarettes delivered anywhere?**

We can only ship to your credit card's billing address. If there is a different address you would like us to ship to, please have it added to your card. Upon delivery we request a signature by an adult.

**If I do not wish to use my credit card, or I do not have a credit card, can I still place an order with CigarettesOnly.com?**

At this moment we only accept credit card (Master Card, Visa, American Express and Discover) since we can only ship to your credit cards billing address. If there is a different address you would like us to ship to, please have it added to your card.

**What if I am having trouble placing an order?**

Our shopping system is very simple, but if for any reason you have trouble placing orders please send us an email at [orders@cigarettesonly.com](mailto:orders@cigarettesonly.com) and someone will contact you for further assistance.

**What about State Taxes?**

Online tobacco shops that are located on Native American lands are not required to charge state cigarette taxes or report sales to state tax departments.

**Why do cigarettes cost so much?**

The increase in cigarette prices in recent years is due mainly to two things: (1) high state cigarette taxes and (2) the multibillion dollar tobacco settlement against the major cigarette manufacturers.

**How are the duty-free cigarettes different than premium cigarettes?**

Duty-Free cigarettes are cigarettes manufactured in the US with the intention to be exported in international markets. For this reason the tobacco blend used might be different to meet the consumers' taste and the package might include other promotional offers different than the ones popular in the US such as Marlboro miles.

**Tar and nicotine yields**

Each year the Federal Trade Commission publishes a report about the tar, nicotine, and carbon monoxide yields of various brands. The report contains information about 1252 domestic brands. Of these the lowest in tar are Carlton, Cambridge, Merit, and Now. The highest in tar are all nonfilter versions of Basic, Camel, Chesterfield, Commander, Lucky Strike, Old Gold, Pyramid, and Tareyton.

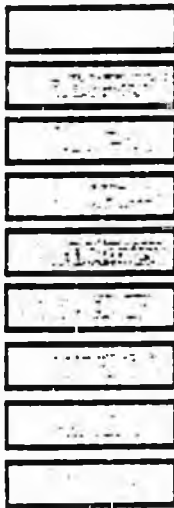
To view the report you can go to <http://www.ftc.gov/bcp/menu-tobac.htm>. This report is in "pdf" form, so you need to be able to download pdf files to read it.

**Are there any legal or privacy issues I should know about?**

~~Yes, there are~~ several issues to be aware of when purchasing tobacco products. Please read our [Legal](#) and [Privacy](#) policies.

U Bored?

ON ONE SITE, THIS IS THE SITE YOU ARE LINKED TO IF YOU PRESS BUTTON THAT SAYS YOU ARE UNDER 18...  
BORED, NOTHING TO DO?  
STICK AROUND HAVE SOME FUN!



**Tell A Friend  
About UBored  
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Win \$10,000**

Have a Web Page that you think should be added to the UBored.com list? Submit our suggestions to [submit@ubored.com](mailto:submit@ubored.com)

Search made simple!



### New Stuff

- NEW** [Java Arcade](#) - Play java games online for free.
- NEW** [Online-Sweepstakes](#) - Collection of thousands of sweepstakes going on every day
- NEW** [The Snark](#) - take tests such as the greed test, the wealth test, the purity test, and the famous person.
- NEW** [CandyStand](#) - One of the greatest Shockwave arcade sites on the net. With games such as billiards, snowboarding, solitaire, and trivia, this site will keep you busy for days
- NEW** [MyFree Jokes, Jokes, Jokes Daily, Mailing List](#) - Join My Free, and you'll get 3 new jokes sent straight everyday. Make sure to uncheck anything you don't want and check Jokes, Jokes, Jokes Daily
- NEW** [Stick Figure Death Theatre](#) - Watch stick figures fight to the death
- NEW** [Xiao Xiao](#) - This site has all the Xiao Xiao movies made by Zhu, the greatest stick figure movie cr must see for all stick figure fighting fans.
- NEW** [Yatta Trivia](#) - Choose between General, Movie, Music, and Football Trivia
- NEW** [GoodQuotes.com](#) - proverbs, bumper stickers, silly quotes, Murphy's laws, gravest mistranslations, celebrity quotes, answering machine messages, famous last words and
- NEW** [CrazyThoughts.com](#) - A funny list of life's unanswered questions.
- NEW** [OxymoronList.com](#) - The largest list of oxymorons (contradictory words) ever coll
- NEW** [Maximum Exposure](#) - Watch real life videos of accidents: stupid stunts, motorcycle explosions, skateboarding, car crashes, animal bites, rescues, sky dives, police chase: extreme sports, fights, and more. Click on the Max X Hits button for their archive of
- NEW** [Shockwave.com](#) - This site has the greatest number of shockwave games on the net.
- NEW** [TeenOffers.com](#) - Free stuff for teens: video games, cd's, magazines, contests, beer posters, and more. Only lists free offers that don't have minimum age requirements.
- NEW** [iWon.com](#) - Win up to \$10,000 each weekday, or \$25 million on tax day, just for engine. Each search you do gives you a free entry into the prize drawing. To win, you resident and 13 years of age or older.
- NEW** [MonitorCamera.com](#) - Take your photo online for free. Because of a new breakthrough technology, you can now take a picture of yourself using your computer monitor. No needed.
- NEW** [UKEvents](#) - has lots of free software and games to while away those boring hours
- NEW** [IsATard](#) - This site as well as it's sister sites, is devoted to getting a chuckle out of you. This site is strictly meant as entertainment and not as any form of degradation to other

### Jokes

- [Cyber Parodies](#) - Listen to funny song parodies for free on the Internet
- [Funsci](#) - Index for Fun Science Gallery, the site for the amateur scientist
- [Embarrassing Moments](#) - Embarrassing funny true stories about dating, relationships, functions, office work, college campus life, student life
- [Jokes](#) - The premiere FREE joke and humor related site on the internet. Search an entire database
- [Free Jokes By E-Mail](#) - Subscribe for free to daily email magazines such as Laff A D

Abby (Advice), Daily Horoscopes, Pet Connection, Entertainment Today, Sports News (WWF, WCW & NWO), Film & TV Quotes, Time Capsules (Significant Events in History), The Daily Recipe, & Quote of the Day

FunJokes.com - Fun , family conscious jokes sent to your mailbox each weekday

FunnyMail.Com - Links to humorous web pages, insults, top 10 lists, jokes, juvenile funny stuff.

Send Free Virtual Insults

Laugh.Net - thousands of jokes, cartoons, song parodies, software pranks, funny photos and more.

Joke-Lists.com - Get the Best of the Best Joke Emails on the Net. These Joke Lists come every day so try them all and keep only the Funniest Funnies. Don't forget to order your Mousepad when you visit.

Jokes-Plus.com - Get your weekly Joke Email and More. Each week we send you a Download of the Week, FREE Trial or Demo software of the Week, Cool Site of the Week and of course 1 or 2 Jokes of the Week.

Strange Reports - Play practical jokes on your friends and family using our free online

Pollcaster - Vote on your favorite topics and see how other people voted: movies, music, dating, TV, sports, politics, etc.

Blibs - You can browse 1000's of stories that our users have created. Rate the ones you like and send your results to your friends

News of the Weird - News of the Weird is the longest-running, most widely-read biz news feature in the United States. A weekly column based upon this site appears in many newspapers in the U.S. and Canada.

Daily Confessions - read confessions posted from naughty web surfers.

The \$95,093.35 check - On a whim, Patrick Combs deposited into his bank's ATM machine those "fake" checks you get in a junk mail letter, never expecting it to get cashed. But they did cash it. That was only the beginning of his fascinating true story. Hear his story from beginning to end.

Mystery.Net - read and solve a new mystery on-line weekly.

The Darwin Awards - True stories of stupid things people do that got them killed.

The Stupid Page - Check out our true funny stories about stupid people, silly signs and product warnings.

RocketMan - The Legend of the Rocket Car - A long, fascinating, and possibly true story of guys who attach a jet engine to their car

Java Arcade Games - online versions of the arcade classics Breakout, Pacman, Asteroids and more.

Yahoo Games - Play games online for free with other web surfers: Chess, Checkers, Backgammon, Bridge, Gin, Go Fish, Poker, Fantasy Football, Fantasy Baseball, Stock Challenge, and more.

Brain of Brian - Useless facts, funny philosophies, silly games, comical quotes, trivia lists, madlibs, and more!

Puzzability - Follow the cup of coffee to find twisted crossword, word game, and picture puzzles to check out the weekly and daily games.

Brain-Teasers - Find a list of 15 interactive puzzles here. More dependant on logic than on word dexterity.

Guess The Name - Guess The Name - Think of a TV show or Movie name, and our computer will try to guess it by asking you some simple questions.

to guess it by asking you some simple questions

OliverBot - Chat with Oliver, the friendly chatterbot

Jigsawland - Jigsaw Land - Solve jigsaw puzzles online. Hundreds of jigsaws to choose from.

Play Mash - Remember the MASH (Mansion-Apartment-Shack-House) game you used to play when you were a little kid, to predict what your life would be like when you grow up? Now online

Play RPS - Play the game of rock, paper, scissors online. This game is also known as

SnanBubbles - If you like popping real bubble wrap, try this online version

LemonadeGame - Setup an online lemonade stand and see how much lemonade you can sell based on the weather forecast for each day, you decide how much to charge per cup and how many to buy.

Cybercones - Create a virtual ice cream cone or hot fudge sundae for yourself, or em

PrizeWinner - Win free prizes by playing video games online. The better you play, the more PrizeWinner.com Prize Bucks you earn towards prizes like CD's, videos, digital camcorders, video games, DVD's, boomboxes, toys, vacations, and more.

PCGame - pc game games free cheat cheats demos links sites faq find search ask dox faq chat news video FPS action adventure flight racing tomb quake kingpin hunter hit

The Densa Quiz - Take a very clever 12 question test to see how smart you are.

Tests, Tests, Tests - Dozens of online tests that you can take for free: personality, IQ, career, stress, lifestyle, dating, and many others.

Daily trivia contests with cash prizes! - \$100 weekly cash prize for Trivia quizzes (USA) Take our quizzes, complete them, and get entered into our weekly drawing. The more you play, the more chances you get.

Test Your Brain Power! - Test your mental powers on crosswords, riddles, word puzzles and IQ quizzes for FREE PRIZES!

Travel Quiz - Travel Trivia @ Travel Notes. Ten travel-related questions to test how much you know about the world we live in. Get them all right to enter the Hall of Fame and qualify for the grand prize!

Fun-e-Cards - Free electronic greeting cards and animated musical fun pages for friends, family, Christmas, romance, and many special occasions

Teen Freebies - Free stuff for the younger generation: free magazines, free music, free games, free catalogs, free contests, and much more. Check back often because this site is frequently updated with new offers.

TheFreeSite - Offers the Web's largest collection of free services and free products. 100+ free games, counters, Webmaster freebies, affiliate programs, chat freebies, digital postcards, free fonts, graphics, guestbook

Catalog Request - Free mail order catalogs. Over 300 catalogs available: gifts, electronics, travel, clothing, entertainment, hobbies, automotive, and more.

Hundreds of Free Product Samples - you can get over the Internet: videos, clothing, food, perfumes, magazines, clothing, and more.

Free Electronic Greeting Cards - Over 1700 to choose from.

Send a free digital postcard

Postage4Free - If you hate paying .33 cents every time you want to mail a letter then

Digital Films - Make your own animated movie for free online. Choose a background, animated actions, dialog, introduction, and ending credits. Put your name as the producer and send the movie to your friends

ColoringSite - Color hundreds of fun pictures for free with our online coloring books



ColorMeSite - Color hundreds of fun pictures for free with our online coloring pages

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Sweepstakes Online - Thousands of Sweepstakes and Contest Listings. Win Prizes. S promotion and development services

FREE Resort Stay! give away! every day! - We give away a resort stay every day for to three children who receive free lodging, pampering, and perks at their choice from the USA and CA.

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The Cam Beat - A One-Stop Cam Directory featuring top WebCams around the world

Beach Cam - Live web cam from Venice Beach, California, updated every 10 minutes

THE AMAZING FISH CAM! - Check out The Continuously Refreshing Fish Cam

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BigCelebrities - BigCelebrities.com offers information on over 15,000 famous celebt actresses, musicians, supermodels, TV stars, movie stars, athletes, and comedians. W latest hollywood gossip and entertainment news

Ecrush - Offers many ways to improve your love life: find out online if someone you on you (with no risk of rejection), ask a question to The Advice Girl, find out which \*NSYNC is your soulmate, browse the Web's largest collection of pick-up lines, or h horror dates.

I bet you will - A reality type game show that proves people will do anything for mor the IBYW crew bargains with innocent bystanders and talks them into outrageous ch eating an entire jar of Mayonnaise in 3 minutes or seeing who can hold out the longe: their pants.

Poll Caster - Create your own polls on subjects like movies, music, dating and more, them to your friends to take. Or, vote on hundreds of different polls already on the sit a new Pentium 4 computer just for voting.

Video Parodies - Watch funny music videos online

Hot Concerts - Watch full length concert videos of your favorite bands for free over David Gray, The Go-Go's, Lit, Everlast, Outkast, The Bangles, Duran Duran, Motley Huey Lewis & the News, Public Enemy, and more

Slang Site - Is a dictionary of slang, webspeak, made up words, and colloquialisms. I listings, or submit your own slang words to our site

Funology - the science of having fun! Funology.com is the premiere online destinatio want to have fun.

Phones Spell - What does your phone number spell?

Internet Anagram Server - Check out this fun Internet Anagram page. See how name rearranged

The Onion - One of the most popular news satire sites on the net. Always good for a

NeoPets - The greatest Virtual Pet Site on the Internet. With your help, we intend to of virtual pet owners, and offer cool things such as games, auctions, shops, postcards more. Best of all, it's completely FREE!

Television Without Pity - Did you miss an episode of your favorite TV show? Find c each week on popular TV shows: Survivor, The Practice, X-Files, West Wing, Buffy Dawson's Creek, Ed, Felicity, and many more.

Amused - Exploring the Internet to bring you the Ultimate Guide to Wasting Time

A fun Zone - If you've got some time on your hands, A Fun Zone is sure to entertain! offers an absolutely enormous archive of fun stuff.

Kiss this Guy - The Archive of Misheard Lyrics is the Internet's largest database of pop songs. Browse by song name or artist, or submit your own.

Money Origami - illustrated instructions for making several origami designs out of a

Hot or Not? - Look at photos of men and women and rate them on a scale of one to your own picture to be rated by others.

Do You Watch TV? - If you had your choice, vote on which character you would want from popular TV shows: Seinfeld, Scooby Doo, The Brady Bunch, Buffy the Vampire Slayer, Friends, Happy Days, Dawson's Creek, Ally McBeal, ER, and more.

Crazyimages.com - A web site full of cool images to keep you amazed and entertained. simulator, watch virtual fireworks, see the birth of a galaxy, play with fractals, and more.

The Nutrition Calculator - Enter a food such as "Big Mac" or "Chocolate Chip Cookie" and get the exact nutrition content such as calories, fat, protein, carbohydrates, etc. The site has 20,000 foods, including products you buy at the supermarket and fast food chains: Big Wendy's, McDonald's, Pizza Hut, Taco Bell and more.

Free Palm Readings and Free Handwriting Analysis

Emode - Self-testing psychology site. Includes tests on personality, IQ, relationships, health. Also provides a celebrity matchmaker.

Facts on Farts and Scoop on Poop - Learn the answers to every question ever asked about these subjects.

Jumontheshark.com - Find out when people think popular TV shows started to go bad. Brady Bunch, The X-Files, ER, Seinfeld, Buffy, Ally McBeal, Beverly Hills 90210, and more.

BirthDay Database - Search over 135 million birth records for the Birthdate of someone on the date, you can also register.

Online Bubblewrap - If you like playing with real bubble wrap, here's an online version.

Database of Song Lyrics - Find the words to over 120,000 songs.

Farts.Com - Fart of the day, fart mart, fart jokes and stories, sound files, and general

Webcrawler Search Vovour - See the keywords that people type into the Webcrawler in realtime as they are typed.

The Cave of Magic - This simple online card trick will amaze you.

Are You Owed Unclaimed Money? - You may be owed unclaimed money by the government. The FindCash database of over 11 million names for FREE to see if your name is on it can come from such sources as old bank accounts, wills, insurance, tax refunds, and former employers.

Movies - Hundreds of movie reviews, previews, trailers, and all the latest news.

E OnLine! - Celebrity Gossip, Interviews, and Entertainment News.

Virtual Flowers - Send a free virtual flower bouquet.

Top 10 Lists - Thousands of top 10 lists of web sites in every imaginable category.

What does your phone number spell?

Twisted Tunes- Listen to over 50 funny song parodies in realtime right over your ear: Up (Windows 95), What If God Smoked Cannabis?, Hand In A Light Socket, and more. radio morning DJ Bob Rivers.

Metacrawler- Search all of the major search engines at once! Yahoo, Lycos, Infoseek, Excite, Alta Vista, and more.

The Death Clock- check out your death day and watch the seconds slip through your fingers

All Music - A music database listing over 470,000 albums, over 155,000 album reviews, 3,100,000 individual tracks, over 43,000 artist biographies, and more than 235,000 album covers

Love Calculator - Calculates the chance on a successful relationship between two people

Hamster Blast - a parody of hamsterdance.com.

Assassin - The dumber people think you are, the more surprised they'll be when you page is all in good fun, we don't intend any harm towards anyone. The first page contains for pop-icons popular enough to warrant them, page two contains individual missions celebrities. Enjoy!

STATE EXCISE TAX RATES ON CIGARETTES  
(January 1, 2003)

STATE	TAX RATE (c per pack)	RANK	STATE	TAX RATE (c per pack)	RANK
Alabama (1)	16.5	45	Nebraska	64	22
Alaska	100	11	Nevada	35	31
Arizona	118	9	New Hampshire	52	25
Arkansas (2)	34	32	New Jersey	150	2
California	87	18	New Mexico	21	38
Colorado	20	39	New York (1)	150	1
Connecticut	111	10	North Carolina	5	49
Delaware	24	36	North Dakota	44	27
Florida	33.9	33	Ohio	55	24
Georgia	12	46	Oklahoma	23	37
Hawaii	120	8	Oregon	128	6
Idaho	28	35	Pennsylvania	100	11
Illinois (1)	98	16	Rhode Island	132	5
Indiana	55.5	23	South Carolina	7	48
Iowa	36	29	South Dakota	33	34
Kansas (2)	70	20	Tennessee (1) (2)	20	39
Kentucky (2)	3	50	Texas	41	28
Louisiana	36	29	Utah	69.5	21
Maine	100	11	Vermont	93	17
Maryland	100	11	Virginia (1)	2.5	51
Massachusetts	151	1	Washington	142.5	4
Michigan	125	7	West Virginia	17	43
Minnesota	48	26	Wisconsin	77	19
Mississippi	18	41	Wyoming	12	46
Missouri (1)	17	43	Dist. of Columbia	100	11
Montana	18	41			
			U. S. Median	48.0	

*Handwritten note:*  
 J. U. S. Median  
 48.00 tax per  
 1<sup>st</sup> pack.

Source: Compiled by FTA from various sources

(1) Counties and cities may impose an additional tax on a pack of cigarettes in AL, 1c to 6c; IL, 10c to 15c; MO, 4c to 7c; NYC \$1.50; TN, 1c; and VA, 2c to 15c.

(2) Dealers pay an additional enforcement and administrative fee of 0.1c per pack in KY and 0.05c in TN. In AR, a \$1.25/1,000 cigarette fee is imposed.

(3) On 7/1/03, the tax rate is scheduled to increase to 79c in KS, and \$1.19 in VT.

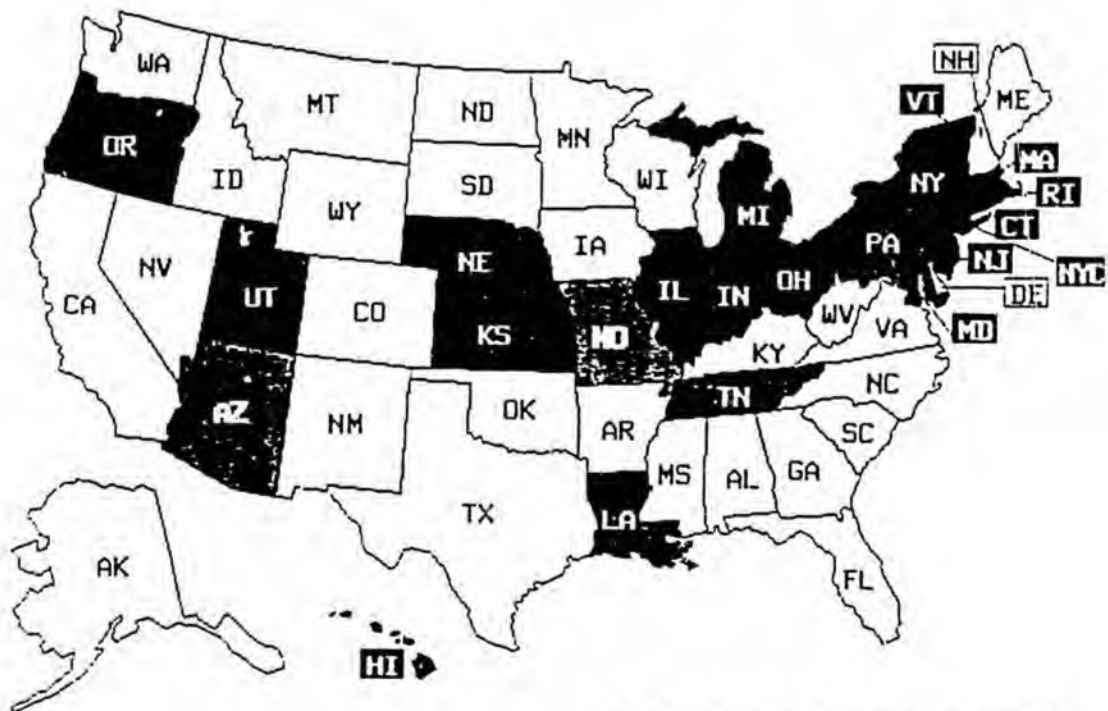
Provided by Sen. Bunde

# Cigarette Tax Increases 2002 - 2003

[click here to see detail](#)

## Cigarette Increases Enacted in 2002

(October 2002)



- States that increased cigarette excise taxes in 2002
- Cigarette tax increase before October in 2002

	Increase	New Rate/ Pack of	Effective Date
	Per Pack	20	
Arizona	\$0.58	\$1.15	11/25/2002
Arkansas	\$0.04	\$0.54	7/1/2001
Connecticut	\$0.61	\$1.11	4/3/2002
Connecticut	\$0.40	\$1.51	3/15/2003
District of Columbia	\$0.35	\$1.00	1/1/2003
Hawaii	\$0.20	\$1.20	10/1/2002
Hawaii	\$0.20	\$1.40	7/1/2004
Illinois	\$0.40	\$0.98	7/1/2002
Indiana	\$0.40	\$0.555	7/1/2002
Kansas	\$0.46	\$0.70	7/1/2002
Kansas	\$0.09	\$0.79	7/1/2003
Louisiana	\$0.04	\$0.24	8/1/2000
Louisiana	\$0.12	\$0.36	8/1/2002
Maine	\$0.26	\$1.00	6/1/2001
Maryland	\$0.34	\$1.00	7/1/2002
Massachusetts	\$0.75	\$1.51	7/25/2002
Michigan	\$0.50	\$1.25	8/1/2002
Nebraska	\$0.30	\$0.64	10/1/2002
New Jersey	\$0.70	\$1.50	7/1/2002
New Mexico	\$0.70	\$0.91	7/1/2003
New York City	\$1.42	\$1.50	7/2/2002
New York State	\$0.55	\$1.11	3/1/2000
New York State	\$0.39	\$1.50	4/3/2002
Ohio	\$0.31	\$0.55	7/1/2002
Oregon	\$0.60	\$1.28	11/1/2002
Pennsylvania	\$0.69	\$1.00	7/15/2002
Rhode Island	\$0.32	\$1.32	5/1/2002
South Dakota	\$0.20	\$0.53	3/18/2003
Tennessee	\$0.07	\$0.20	7/15/2002
Utah	\$0.18	\$0.695	5/6/2002
Vermont	\$0.49	\$0.93	7/1/2002
Vermont	\$0.26	\$1.19	7/1/2003
Washington	\$0.60	\$1.424	1/1/2002
West Virginia	\$0.38	\$0.55	3/1/2003
Wisconsin	\$0.18	\$0.77	10/1/2001
Wyoming	\$0.48	\$0.60	7/1/2003
U.S. Median*		\$0.48	1/1/2003

\*Includes increase effective in 2002.

Source: Compiled by FTA from various sources.

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September 2000

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## The Unfair Cigarette Sales Act

The Minnesota Unfair Cigarette Sales Act (UCSA) requires cigarettes to be sold at minimum prices. The act has the effect of raising cigarette prices and increasing the margins of wholesalers and retailers. This information brief describes how the Minnesota UCSA works, the laws in other states, and the likely economic effects of the UCSA. An appendix also describes the law, enacted in 2000, that requires UCSA prices to be used for certain gray market cigarettes.

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157-247-5920

## Overview

**How the Act Works.** The Unfair Cigarette Sales Act (UCSA) prohibits wholesalers and retailers from selling cigarettes "below cost." The act establishes a presumption that wholesalers' costs are 4.5 percent of invoice prices and that retailers' costs are 8 percent of the invoice prices. In combination, the act presumes a 12.9 percent total mark-up. Wholesalers and retailers may use lower mark-ups, if they can prove their actual selling costs are lower. However, wholesalers must file with the Department of Revenue (DOR) before doing so. Few wholesalers do so and, by most accounts, retailers generally charge the statutory mark-ups.

**Administrative Responsibilities under the Act.** DOR is responsible for administering and enforcing the UCSA. The costs of administration are offset by fees charged to cigarette wholesalers.

**Minimum Cigarette Pricing Laws in Other States.** Nearly half of the other states (24) have similar laws, although most of these states (15) have lower percentage mark-ups. Seven states have general fair trade laws, but no separate law for cigarettes. A substantial number of states (18) do not regulate cigarette prices.

**Purpose of the law.** The stated purpose of the act is to prevent unfair competition from sales below cost. In practice, it restricts common sales techniques and much price competition. The act has been supported by anti-smoking advocates because it raises the price of cigarettes.

**Economic Effects of the UCSA.** Based on standard principles of microeconomic theory, the UCSA likely:

- Raises cigarette prices
- Reduces Minnesota sales of cigarettes
- Increases the profits of wholesalers and retailers of cigarettes, particularly smaller sellers with higher cost structures
- Is regressive, since it redistributes income from smokers to owners of wholesale and retail outlets
- Magnifies or increases the burden of federal and state cigarette excise taxes on consumers, since the statutory percentage mark-ups are based on amounts that include the excise taxes
- Has increased the cost to smokers of the legal settlements of state-filed lawsuits against cigarette manufacturers, since these settlements are generally paid by increased cigarette prices which are subject to the act's percentage mark-ups

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## The Minnesota Unfair Cigarette Sales Act

### How the Act Works

The Minnesota Unfair Cigarette Sales Act is a “fair trade” law that sets minimum permissible prices for wholesale and retail sales of cigarettes. The purpose of the act, according to its terms, is to prevent wholesalers and retailers from selling cigarettes below cost and, thus, to “have the intent or effect of injuring a competitor, destroying or lessening competition[.]”<sup>1</sup> Selling below cost, according to the act’s purpose statement, is “an unfair and deceptive business practice” and “an unfair method of competition.”<sup>2</sup>

**Minimum prices of cigarettes under the act are determined under a series of percentage mark-ups of manufacturers’ or wholesalers’ prices.**

The act specifies the minimum prices for cigarettes under a series of percentage mark-ups. The following chart shows how the calculations are made. These percentages are presumptions; a retailer or wholesaler may deviate from them if its actual costs are lower. However, a wholesaler must pre-file documentation with DOR before charging based on lower actual costs.<sup>3</sup> Retailers are not required to pre-file, but the act provides that actual costs are determined by cost surveys.<sup>4</sup> These procedures are discussed in more detail below.

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<sup>1</sup> Minn. Stat. § 325D.30 (1998).

<sup>2</sup> *Id.*

<sup>3</sup> See Minn. Stat. § 325D.32, subd. 10(c) (1998).

<sup>4</sup> Minn. Stat. § 325D.38, subd. 2 (1998).

### Calculation of Minimum Cigarette Sale Prices

manufacturer's gross invoice price (excluding manufacturer's discounts for timely payment and stamping)		
+		
excise tax		
=		
basic cost of cigarettes		
+		
4% mark-up	or	wholesaler's actual cost of doing business (documentation substantiating this must be filed with DOR)
+		
0.5% mark-up	or	actual cartage costs, if paid by wholesaler
=		
minimum wholesale price		
+		
8% of gross invoice cost to retailer	or	retailer's actual cost of doing business
=		
minimum retail price		

The net result (if wholesaler and retailer charge the presumed percentage mark-ups) is that minimum retail price equals 12.9 percent of the sum of the manufacturer's invoice price and federal and state excise taxes. The minimum mark-up does not equal the sum of the wholesalers' and retailers' mark-ups, since they must be multiplied by each other.<sup>5</sup> Also, if the cigarettes were

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<sup>5</sup> Expressing it algebraically, if  $p$  is the manufacturer's price and  $t$  is the federal and state excise taxes, the wholesaler's minimum price equals  $(p + t) + 0.045(p + t)$  or  $1.045(p + t)$ . The retailer's mark-up, then, applies to this amount. The retail price equals  $1.045(p + t) + 0.8(1.045(p + t))$  or  $1.129(p + t)$ . Thus, the total presumed mark-up equals 12.9 percent.

purchased in distressed sale type circumstances (e.g., bankruptcy, forced sales, and other sales outside of the ordinary channels of trade), retailers and wholesalers may not use invoice prices in these computations.<sup>6</sup>

**The act addresses special situations by exempting some sales of cigarettes and by subjecting other commodities to minimum pricing, if they are sold in combination with cigarettes.**

The act exempts:

- Isolated sales
- A *bona fide* sale to close out a business of selling cigarettes
- Sales of defective, imperfect, or damaged cigarettes<sup>7</sup>

If dealers sell cigarettes at a combined price with another good or service, the minimum pricing rules then apply to other commodities and these commodities cannot be sold below actual cost.<sup>8</sup> This is intended to prevent tying of cigarettes with another commodity to effectively avoid the minimum pricing rules. Thus, dealers cannot sell a combination of cigarettes and some other product as a "loss leader."

**Retailers and wholesalers may use actual costs instead of the statutory percentages; this is, apparently, rarely done.**

As indicated in the flow chart, the act authorizes wholesalers and retailers to use their actual costs, rather than the presumed statutory mark-ups. However, the act imposes barriers to doing so.

For a wholesaler to use this actual cost option, it must submit to the Commissioner of Revenue "documentation substantiating the actual cost of the cigarettes *before* selling at actual cost."<sup>9</sup> The wholesaler may only begin selling at actual cost, if 15 days have passed and the Commissioner of Revenue has not requested additional documentation. New documentation must be filed each year, if the wholesaler wishes to continue using the actual cost option. Furthermore, any time the basic cost of cigarettes to the wholesaler increases, new documentation must be re-filed. The basic cost of cigarettes changes whenever one of three events occur:

- the manufacturer increases prices
- the federal excise tax increases
- the state excise tax increases

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<sup>6</sup> Minn. Stat. § 325D.39 (1998).

<sup>7</sup> Minn. Stat. § 325D.36 (1998).

<sup>8</sup> Minn. Stat. § 325D.34 (1998).

<sup>9</sup> Minn. Stat. § 325D.32, subd. 10(c) (1998) [Emphasis added].

Excise tax increases are sporadically enacted. But manufacturers have tended, in recent years, to regularly increase prices. For example, manufacturers increased prices twice in calendar year 1998 and once in calendar year 1999.<sup>10</sup> Each of these would require a wholesaler seeking to use the actual cost option to file new documentation and wait (at least) 15 days to implement the actual cost-based pricing for the cigarettes on which the manufacturer increased prices.<sup>11</sup>

The law is not exactly clear what elements must be taken into account in determining a wholesaler's actual costs. Recognized statistical and cost accounting must be used. The statute contains a list of costs including:

without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance, or other expenses.<sup>12</sup>

Filing to use actual costs may also subject the wholesaler's proprietary information on costs and pricing strategies to disclosure to its competitors. Information filed under the UCSA is generally public information under the Government Data Practices Act.<sup>13</sup> A district court has held that certain cost and pricing information qualify as a "trade secret" and are not subject to public disclosure.<sup>14</sup>

According to DOR, over the years, only a handful of wholesalers typically file with DOR to use actual pricing information. At the present time, only one wholesaler has filed to use actual costs. (The pending dispute over whether this filing information is subject to public disclosure has likely affected the willingness to file.) However, in response to the one filing, 38 other wholesalers have filed to meet the prices of the one wholesaler that did file.

Retailers are not required to pre-file documentation in using actual cost pricing.<sup>15</sup> They are,

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<sup>10</sup> This is based on filings with DOR. The major manufacturers tend to increase their prices together. For example, filings were made by on August 27, 1999, by Philip Morris U.S.A., R. J. Reynolds, Brown & Williamson Tobacco, and Lorillard Tobacco Company, and three days later on August 30, 1999, by Liggett Group Inc. All of the increases (except for speciality brands) were for an identical amount of \$9 per thousand. A similar pattern prevailed for the other increases.

<sup>11</sup> Minn. Stat. § 325D.32, subd. 10(c) (1998).

<sup>12</sup> Minn. Stat. § 325D.38, subd. 2 (1998).

<sup>13</sup> Minn. Stat. ch. 13.

<sup>14</sup> *Supervalu v. Smith*, Ramsey County Dist. Ct., No. 62-C9-99-010390 (Aug. 24, 2000). The period for appeal of this decision remains open. The court decision effectively reverses an advisory opinion issued by the Commissioner of Administration that under the circumstances involved in *Supervalu*, the information was not a non-public trade secret. Minn. Dept. of Administration, Advisory Opinion 99-035 (Oct. 26, 1999).

<sup>15</sup> Compare Minn. Stat. § 325D.32, subd. 10(c) (1998) with Minn. Stat. § 325D.32, subd. 11 (1998) (wholesalers' statute includes filing requirement, while retailers' statute does not).

however, subject to the same rules of proof of actual costs that apply to wholesalers. Thus, charging less than the percentage mark-ups subjects a retailer to the threat of civil liability, if the retailer is unable to prove under the act's standards that its actual costs justified the lower mark-up.

Wholesalers and retailers may lower their prices to meet the price of a competitor, but only if the lower price is a legal price.<sup>16</sup> This authority cannot be used to lower prices to those of cigarettes that are exempt from the act's restrictions (e.g., business liquidation sales and sales of defective products). Wholesalers are required to file a written notice of their intent to meet a competitor's price with the Commissioner of Revenue.<sup>17</sup> The wholesaler cannot lower its price if the Commissioner of Revenue notifies the wholesaler that the price was not a legal price. For a retailer to use this authority to meet a lower price, a survey apparently must be done to determine if the price is a legal price. This survey would document lowest costs for the trading area.<sup>18</sup>

### **Administrative Responsibilities under the Act**

**The Department of Revenue administers the act; the cost of administration is indirectly paid by cigarette wholesalers.**

Various state agencies have been responsible for administering the UCSA since its enactment in 1961.<sup>19</sup> DOR now administers the act, a duty which it has carried out since 1979.<sup>20</sup> A natural question is why a tax administrative agency is charged with administering and enforcing a fair

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<sup>16</sup> Minn. Stat. § 325D.37 (1998).

<sup>17</sup> Minn. Stat. § 325D.37, subd. 3 (1998).

<sup>18</sup> Minn. Stat. §§ 325D.37; 325D.38 (1998).

<sup>19</sup> The original act charged the Department of Business Development (now Trade and Economic Development) with administrative responsibility for the act. 1961 Laws, spec. sess., ch. 35, § 13, codified at Minn. Stat. § 326.76 (1961). The 1967 Legislature transferred a number of the duties of that department to the attorney general. 1967 Laws, ch. 302, §§ 1, 2. The legislature also modified the UCSA, including the administrative responsibilities. 1967 Laws, ch. 600, § 12. The effect of the reassignment of responsibilities to the attorney general was apparently construed to include the responsibility for the UCSA. See Minn. Stat. § 325.77 (1967) (codifying the two laws as transferring the duties to the attorney general). In 1969, administrative responsibility was transferred to the Commissioner of Taxation. 1969 Laws, ch. 759, §§ 4, 5. In 1973, administrative authority was transferred yet again, to the commerce commission and its chair. 1973 Laws, ch. 607, §§ 3 - 6. The 1978 Legislature did not transfer the administrative authority, but simply repealed the commerce commission's duties. 1978 Laws, ch. 793, § 98. This effectively left the act as self-enforcing or by private actions. After a one-year hiatus in 1979, the legislature required the Commissioner of Revenue to administer and enforce the provisions of the act. 1979 Laws, ch. 303, art. 10, § 4.

<sup>20</sup> The statutory language of the UCSA simply refers to "the commissioner." It does not define or specify which commissioner is referred to. The statutory section specifying the Commissioner of Revenue's powers directs the commissioner to administer and enforce the act. Minn. Stat. § 270.06(20).

trade law.<sup>21</sup> One possible answer is that the legislature considered the department's expertise in administering the excise taxes on cigarettes and its ongoing relationships with cigarette wholesalers that pay the excise taxes. This expertise and knowledge of the industry may have been thought to make DOR the most efficient and effective state agency to administer the law.

**Mandatory administrative responsibilities.** The act requires the department to:

- Review and (implicitly) substantiate the accuracy of submissions by wholesalers seeking to charge lower mark-ups than the statute's presumption<sup>22</sup>
- Inform wholesalers who seek to meet prices of competitors whether the price is a legal price<sup>23</sup>
- Regularly publish presumed legal prices in the State Register<sup>24</sup>
- Collect the distributor fees<sup>25</sup>

**Other powers.** The act gives the department authority in administering the act to:

- Deny a distributor or subjobber a license to sell cigarettes for violations of the act<sup>26</sup>
- Revoke a distributor's or subjobber's authority to apply tax stamps to cigarettes following an administrative proceeding<sup>27</sup>

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<sup>21</sup> Administration of a fair trade law and, in particular, its application to retailers and others who are not cigarette excise taxpayers would not seem to be a natural responsibility for DOR. The department's primary responsibilities are administration and collection of taxes, as well as payment of state aid to local governments. See Minn. Stat. § 270.06 (1998). By contrast, administration of the most of the laws regulating trade practices is in the Department of Commerce (insurance, financial institutions, and securities) or the Office of Attorney General (general trade practice laws). See, e.g., Minn. Stat. § 8.31 (assigning administrative responsibilities for various trade practice laws to the attorney general).

<sup>22</sup> Minn. Stat. § 325D.32, subd. 10(c) (1998).

<sup>23</sup> Minn. Stat. § 325D.37 (1998).

<sup>24</sup> Minn. Stat. § 325D.371 (1998). These prices will need to be published each time the basic cost of cigarettes changes. This occurs when the manufacturer raises prices or when the federal or state excise tax increases. The law requires the prices to be published at least every ten months, even if one of these events does not occur.

<sup>25</sup> Minn. Stat. § 325D.415 (1998).

<sup>26</sup> Minn. Stat. § 325D.33, subd. 5 (1998).

<sup>27</sup> Minn. Stat. § 325D.33, subd. 6 (1998).

- Impose and collect administrative penalties for violations of the act<sup>28</sup>
- Conduct investigations to determine compliance with the act<sup>29</sup>

The law imposes fees on cigarette distributors to recoup the cost of administering the act. These fees equal \$2,500 per year for a distributor with more than \$2 million in cigarette tax collections and \$1,200 for all other distributors. In fiscal year 1998, these fees generated \$91,800 and \$123,500 in fiscal year 1999. These fees are deposited in the general fund. Although they are imposed to recover the cost of administering the act, they do not automatically go to DOR. As part of the process of developing a budget, the legislature appropriates money for the function of administering the act based on the legislature's determination of the appropriate expenditures for that function. In any given year, this may not equal the revenue yield from the distributor's fee.

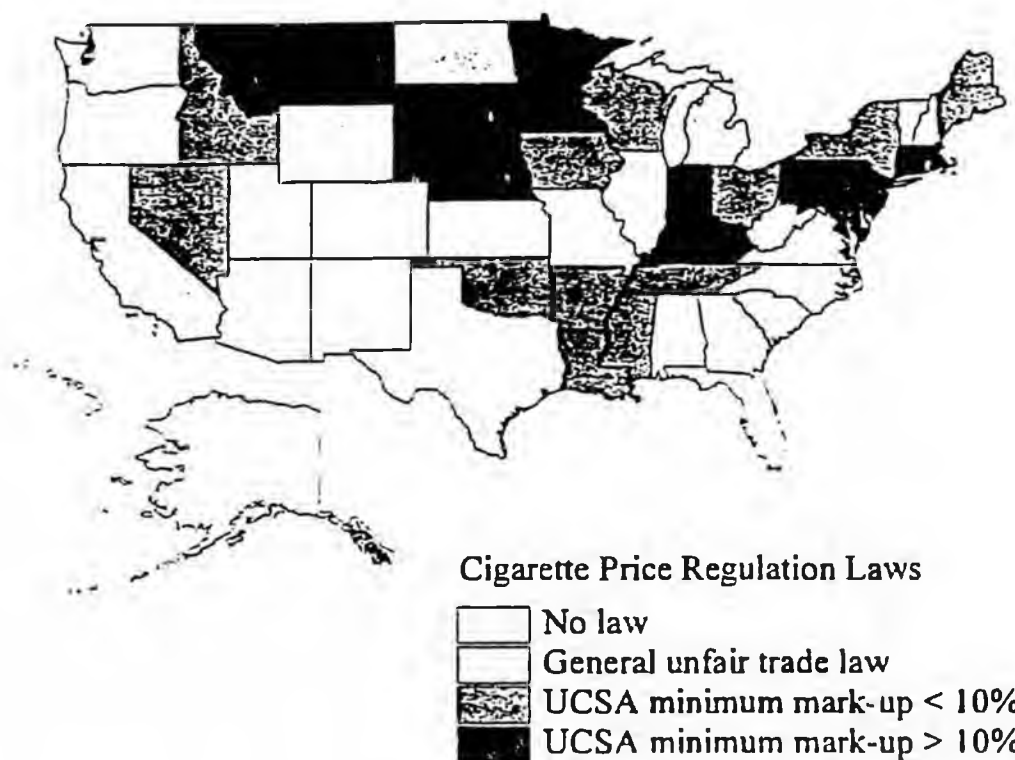
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<sup>28</sup> Minn. Stat. § 325D.33, subd. 8 (1998).

<sup>29</sup> Minn. Stat. § 325D.405 (1998).

## Minimum Cigarette Pricing Laws in Other States

Including Minnesota, 25 states have laws prohibiting the sale of cigarettes below cost or requiring sales at a minimum price. Seven states (California, Colorado, Michigan, North Dakota, South Carolina, West Virginia, and Wyoming) have general fair trade laws that prohibit sale of cigarettes (along with other goods) below the seller's cost. The District of Columbia prohibits secret discounts or payments in the sales of cigarettes that are not generally available to all sellers. In 18 states, cigarette prices are determined by free market forces. The map displays which states have minimum pricing laws, general fair trade laws, or do not regulate cigarette prices.



Some of the details of these laws are set forth in the table below. As can be seen from the table, Minnesota's presumed minimum price is among the higher of the states with these laws. A few states have higher minimum price presumptions than Minnesota (e.g., Massachusetts, Connecticut, Montana, Nebraska, New Jersey, and Maryland). South Dakota and Indiana have the same presumed minimum price as Minnesota. Other states have lower presumptions, some of them quite a bit lower.

Three bordering states, Iowa, South Dakota, and Wisconsin, have minimum cigarette pricing laws. Minnesota's other border state, North Dakota, does not have a minimum pricing law, but a general trade practices law applies.



**State Statutes Requiring Minimum Pricing of Cigarettes**

State	Minimum Mark-up*			Penalties**
	Wholesale	Retail	Total	
Arkansas	2.75%	6.00%	8.92%	\$500 fine; injunctive relief; revoke/suspend license
California	General unfair trade practices law			
Connecticut	6.50%	8.00%	15.02%	
Colorado	General unfair trade practices law			
Delaware	5.00%	None	5.00%	\$1,000 for first offense, \$5,000 for subsequent; injunctive relief; suspend/revoke license
District of Columbia	Prohibits secret payments and discounts			Injunctive relief; treble damages; suspend/revoke license
Idaho	2.00%	6.00%	8.12%	Misdemeanor \$500 fine, 6 months
Indiana	4.50%	8.00%	12.86%	Injunctive relief
Iowa	3.00%	6.00%	9.18%	Misdemeanor; injunctive relief; suspend/revoke license
Kentucky	2.75%	8.00%	10.97%	\$1,000 fine; injunctive relief
Louisiana	2.00%	6.00%	8.12%	Suspend permit
Maine	2.00%	6.00%	8.12%	Injunctive relief, treble damages
Maryland	5.00%	8.00%	13.40%	Injunctive relief; suspend/revoke license
Massachusetts	2.75%	25.00%	28.44%	\$500 fine
Michigan	General unfair trade practices law			
Minnesota	4.50%	8.00%	12.86%	Treble damages; injunctive relief
Mississippi	2.00%	6.00%	8.12%	\$500 fine; injunctive relief
Montana	5.75%	10.00%	16.33%	\$500 fine; injunctive relief
Nebraska	4.75%	8.00%	13.13%	Class V misdemeanor; suspend/revoke license; injunctive relief
Nevada	Wholesalers may not sell below cost			\$50 fine per violation

State Statutes Requiring Minimum Pricing of Cigarettes (cont.)

State	Minimum Mark-up*			Penalties**
	Wholesale	Retail	Total	
New Jersey	6.00%	8.00%	14.48%	\$1,000 fine; injunctive relief; suspend/revoke license
New York	May not sell below cost			Injunctive relief; suspend/revoke license
North Dakota	General unfair trade practices law			
Ohio	2.00%	6.00%	8.12%	Suspend/revoke license
Oklahoma	2.75%	6.00%	8.92%	\$500 fine; injunctive relief; suspend/revoke license
Pennsylvania	4.00%	6.00%	10.24%	Agency discretion
Rhode Island	May not sell below cost			Suspend/revoke permit
South Carolina	General unfair trade practices law			
South Dakota	4.50%	8.00%	12.86%	Injunctive relief; suspend/revoke license
Tennessee	none	8.00%	8.00%	\$250 first violation, \$500, second, \$1,000, subsequent; injunctive relief; suspend/revoke license
West Virginia	General unfair trade practice law			
Wisconsin	3.00%	6.00%	9.18%	Injunctive relief, treble damages
Wyoming	General unfair trade practice law			
<p>* In most states the minimum mark-up is a presumption and applies against the "basic cost of cigarettes." This is usually defined as the lower of the invoice amount or the cost of replacement. Since the mark-up is a presumption, the wholesaler or retailer may sell at a lower price, if it files sufficient evidence that its actual costs are lower than the presumption.</p> <p>** Penalties in addition to the presumed availability of compensatory monetary damages.</p>				

## The Purpose of the Law

Two purposes are commonly cited for the UCSA:

- **Protecting wholesale and retail cigarette sellers from “unfair” competition**
- **Reducing smoking**

**Protecting cigarette sellers.** The UCSA explicitly states its purpose is to prevent “injuring a competitor, destroying or lessening competition” through “unfair competition[.]”<sup>30</sup> In operation, the law does not encourage competition, but rather protects the margins and profits of some cigarette sellers. The law restricts competition by prohibiting standard sales techniques used in the retail and wholesale businesses. Normal competition in the retail marketplace almost inherently “injures” competitors by capturing sales that the other sellers would make.

The law does not prohibit competition *per se*, but restricts it to specific types of competition. In practice, it appears to have two effects:

- **The act restricts techniques typically used by new entrants and businesses attempting aggressively to increase their market shares through price competition.** Two standard competitive techniques—“loss leaders” to attract customers to a store and temporary sales at a loss to attract market share—are prohibited by the act. Both the techniques are most commonly used by new businesses or by businesses that are seeking to expand their market shares. Thus, the law appears intended to protect existing sellers from these standard practices of new entrants and sellers aggressively attempting to increase their market share through price competition.<sup>31</sup>
- **Low-cost sellers are disadvantaged.** By creating a presumption that the sales below statutory percentage mark-ups are “below cost” and in violation of the law, the act burdens low-cost sellers. These sellers can sell below these statutory presumption, if they can prove their costs are lower. But the law imposes burdens on them to do so. For wholesalers, this is a bureaucratic and procedural burden. They must file proof with DOR before charging lower than the statutory percentages. This increases their costs, imposes delays, and potentially subjects cost information to public scrutiny, as well as making it difficult to use this option. Retailers are not subject to these bureaucratic requirements, but may still be deterred from selling below the statutory presumptions. Doing so subjects them to potential lawsuits by competitors and state enforcement actions in which they would be required to prove (under uncertain standards) that they were not selling below cost.

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<sup>30</sup> Minn. Stat. § 325D.30 (1998).

<sup>31</sup> One can observe that if these standards were applied across all markets that most of the sales practices of the consumer-oriented e-commerce sector would have been illegal.

Thus, the act appears designed mainly to protect sellers of cigarettes with higher cost structures from price competition from new entrants and sellers with low-cost structures (e.g., large discount operations). The law's main beneficiaries are convenience stores, small grocery stores, and other smaller sellers of cigarettes. The milk price regulation law<sup>32</sup> is the only other Minnesota law that requires minimum prices.<sup>33</sup> The milk price law is generally thought to serve income distribution effects—i.e., by most accounts, it is intended to raise the incomes of dairy farmers. The purpose of the UCSA appears to be similar, i.e., to redistribute income to small cigarette sellers with high-cost structures. Testimony before the legislature in opposition to proposals to repeal or limit the UCSA generally tends to bear this out; the focus of the opposition has been from owners of convenience and other small stores that make significant cigarette sales.

**Reducing smoking.** Although not reflected in the act's purpose statement, during legislative debates the law has been supported on the basis that it raises cigarette prices and, thereby, reduces smoking. Since studies show that cigarette sales decline with increases in prices and since the act has the effect of increasing cigarette prices, it likely does reduce smoking.<sup>34</sup> This is likely an unintended side effect of the law; its principal purpose is to protect high-cost, small sellers of cigarettes. More direct ways to use government programs to reduce smoking would include anti-smoking campaigns or raising the excise tax.<sup>35</sup>

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<sup>32</sup> Minn. Stat. §§ 32.70 - 32.745 (1998). This law prohibits selling below the amount the wholesaler or retailer paid for the product. Minn. Stat. §§ 32.70, subd 2; 32.72 (1998). The law does not require selling costs to be included in the price, as the UCSA does. One could argue that the minimum wage law imposes a minimum price regulation (i.e., wages are a price for work). It is clear that the minimum wage is intended to serve income distribution purposes—i.e., to help raise the incomes of low-wage workers.

<sup>33</sup> The restraint of trade law prohibits selling below cost, but it also requires having a purpose of "injuring a competitor or destroying competition" before such a sale is illegal. Minn. Stat. § 325D.04 (1998). This purpose requirement effectively allows selling below cost to establish market share, as a loss leader to attract customers to a store, and other common techniques used by retailers and wholesalers.

<sup>34</sup> See the discussion in the text below on the elasticity of cigarette purchases and a guess as to the effect of the act on amount of cigarette purchases in note 40.

<sup>35</sup> An excise tax increase would be more a uniform mechanism for raising cigarette prices than the UCSA which affects sellers differentially depending upon their cost structures. It would also permit the revenue to be rebated to low-income individuals to offset the regressivity of the excise tax. This could be done through an existing mechanism, such as the working family (earned income) credit or the property tax refund.

## Economic Effects of the Unfair Cigarette Sales Act

The UCSA has several likely overall or general economic effects. It:

- Raises cigarette prices
- Reduces Minnesota sales of cigarettes
- Increases the profits of wholesalers and retailers of cigarettes
- Is regressive, redistributing income from smokers to owners of wholesale and retail outlets

The UCSA, in effect, sets minimum prices which may be charged to purchasers of cigarettes. These minimum price requirements deviate from prices that otherwise would be set by the private market. This type of price regulation is an unusual form of government intervention in the private market. Most prices are determined by factors of supply and demand. The government regulates prices in a few circumstances. Most of these involve cases in which it is believed that the forces of private competition will not set appropriate prices because of market failure. In almost all cases, these government regulations involve setting *maximum* prices, such as price regulations of public utility rates.<sup>36</sup> These situations involve instances where the regulation reduces the cost to consumers of the good or service. By contrast, the UCSA involves a situation where a *minimum* price is mandated. Thus, the UCSA has the opposite effect; it increases the prices that cigarettes smokers pay, all other things being equal.

The UCSA has some important economic effects. Some of these potential effects are suggested in the bulleted items below. This analysis is based on standard microeconomic principles and assumes that the market for retailing and wholesaling cigarettes is a perfectly competitive market.<sup>37</sup> The assertions are not based on empirical research and actual effects may differ, but economic theory suggests that these basic relationships are likely to hold.<sup>38</sup>

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<sup>36</sup> The purpose of these regulations of maximum prices is to prevent firms from setting prices that would earn "monopoly profits." These interventions in the market are generally justified by concerns of efficiency (e.g., without regulation of maximum prices, consumers' preferences for utility services would be under-served; too little electricity or gas would be purchased and we'd all be worse off as a result) or income distribution (e.g., poor people would have to pay too much of their incomes for utility services).

<sup>37</sup> Even if the market is not perfectly competitive, the results are likely to be about the same. The assumption that these markets are or are close to being perfectly competitive seems reasonable. On the retail side especially, there are a large number of sellers, none of whom have a dominant share. Furthermore, there is relative ease of entry for both wholesalers and retailers (e.g., capital and information requirements are low). The business of manufacturing cigarettes appears, by contrast, to be an oligopoly. Evidence for this includes: the small number of firms, the large capital requirements, and the lockstep pricing patterns by the industry. This fact may raise a question as to whether state minimum pricing laws tend to divert profits from the manufacturers to wholesalers and retailers, if their requirements (and effects on the quantity purchased) enter into the oligopoly's pricing decisions. This potential effect is ignored in the text.

<sup>38</sup> The author is unaware of any empirical economic research on the effect of minimum cigarette pricing laws. Research has been done on the effects of cigarette excise taxes and, as noted later in the text, special excise taxes are fairly similar policy instruments to the UCSA. The main differences between the two are: (1) the

- **Retail and wholesale prices of cigarettes will be higher.** Consumers pay more for cigarettes than they otherwise would. This follows naturally from the legal requirement of a minimum price requirement.
- **Fewer cigarettes will be sold in Minnesota.** This flows from the first point, that the act increases cigarette prices. A standard economic principle is the downward sloping demand curve: As prices increase, the quantity of the good or service consumed declines. Because of the addictive nature of tobacco, the demand for cigarettes has traditionally be thought to be relatively inelastic (i.e., not very responsive to price). However, the demand is not completely inelastic; the quantity purchased does drop with price increases.<sup>39</sup> Thus, the increase in price mandated by the act will decrease cigarette consumption. A reasonable guess might be that the act reduces consumption by 2 percent.<sup>40</sup>
- **The act generally will increase the profits of retailers and wholesalers of cigarettes.** These range from convenience stores and grocery stores to cigarette distributors. Of course, not all competitors will be affected equally. Sellers with lower cost structures will lose some of their advantages. For example, smokers may be more likely to purchase individual packs from a convenience store, rather than being sure to purchase larger quantities (e.g., cartons or multiple cartons) from a discounter, such as a large grocery store or discount club. The act will narrow or may even eliminate the price difference between these different types of retailers. As a result, these lower cost retailers will make larger profit margins on their sales, but will make fewer sales. The net result probably is lower total profits for these low-cost sellers.
- **The UCSA likely will redistribute income from lower to higher income individuals.** This point follows from the fact that the act increases the price of

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revenue from the excise tax is retained by the government, rather than going to the firms engaged in the cigarette trade, and (2) excise taxes are imposed at a uniform rate, while the effect of the minimum pricing laws will vary from seller to seller depending upon how much the price they would charge differs from the law's required minimum.

<sup>39</sup> Standard estimates of the overall elasticity ranges from -0.3 to -0.5. See U.S. Dept. of Health and Human Services, *Reducing Tobacco Use: A Report of the Surgeon General 322-37* (2000) (summarizing the empirical studies). Studies summarized in the Surgeon General's Report show elasticities ranging from -0.14 to -1.12. Most of the elasticities center around -0.4. An elasticity measures the change in consumption for a 1 percent change in price. Thus, an elasticity of -0.4 implies that a 1 percent increase in the price of cigarettes would result in a drop in consumption of 0.4 percent.

<sup>40</sup> This guess is based on an assumption that the UCSA results in a 5 percent increase in overall cigarette prices (i.e., slightly less than one-half of the mandated statutory mark-up) and that the price elasticity is -0.4 percent. The elasticity is the mid-point of the range of elasticities summarized in the Surgeon General's Report. See note 39. It should be noted that DOR traditionally has used a much lower elasticity of -0.1 or -0.2 in preparing revenue estimates for excise tax increases. The effect of the act on average mark-ups is only a guess. Given the relatively thin margins in the grocery business and testimony by convenience store owners that cigarettes provide a large share of their profits, it seems plausible and, perhaps, may be on the low side.

cigarettes, while increasing the profits of retailers and wholesalers. The price increase is distributed regressively. Cigarettes are not normal goods; the amount individuals spend on them does not increase with income. Cigarettes purchased constitute a larger share of the incomes of low-income smokers. By contrast, the profits of retailers and wholesalers tend to go to more affluent individuals.<sup>41</sup> In this sense, it is fair to think of the effects of the act as similar to a state-imposed excise tax, the revenues from which are mainly distributed to owners of retail and wholesale stores that sell cigarettes. The overall effect is likely to make the income distribution more regressive.

- **The act creates an incentive to purchase cigarettes at locations outside its jurisdiction.** Because of its price effects, the act creates an incentive for smokers to seek ways to avoid its effects. This can be done by making purchases at Indian reservations or in neighboring states (e.g., North Dakota) where similar laws do not apply. This effect of diverting purchases has been a widely recognized effect of state excise taxes.<sup>42</sup> The act, to the extent that minimum pricing does not apply at other locations, has a similar effect. Thus, the incentive to make purchases on Indian reservations or in other states may increase somewhat.

#### **The UCSA magnifies the effect of state and federal excise tax increases.**

Aside from the general economic effects of the UCSA, it interacts with the state and federal excise taxes on cigarettes. The minimum mark-ups under the act are calculated from the "basic cost of cigarettes." This amount is the combination of the manufacturer's price *plus* the state and federal excise taxes. As a result, when the state increases the excise tax, this automatically requires an increase in retail and wholesale prices equal to not just the amount of the excise tax, but also the minimum mark-up under the UCSA. As described above, Minnesota's minimum mark-up equals 12.9 percent. Thus, if the federal or state government were to increase the excise tax by 10 cents per pack, the act would require the retail price to rise by 11 cents per pack. Absent the act's requirements, one would expect that the price increase from an excise tax would

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<sup>41</sup> A small part of the increased revenue to retailers and wholesalers probably goes to employees and other suppliers of those firms, rather than to profits. This assumes that (1) the part of the return on the higher productivity of workers in lower cost retailers and wholesalers goes to the firm's owners, rather than the workers, and (2) more wages are paid to workers for retailers and wholesalers because the act redistributes more sales to higher cost retailers. In essence, the act results in more workers and employees being employed by retailers and wholesalers of cigarettes.

<sup>42</sup> See, e.g., Jerry G. Thursby and Marie C. Thursby, "Interstate Cigarette Bootlegging: Extent, Revenue Losses, and Effects of Federal Intervention," 53 Nat. Tax J. 59 (2000); Patrick Fleener, "How Excise Tax Differentials Affect Interstate Smuggling and Cross-Border Sales of Cigarettes in the United States," Tax Foundation (Oct. 1998).

be limited to the amount of the tax. Instead, actual price effects are larger. This apparently occurs and is observable in national data.<sup>43</sup>

This effect could be eliminated by changing the law to base the percentage mark-ups on the manufacturer's invoice prices, excluding federal and state excise taxes. The percentage presumptions could be adjusted to prevent this from having an immediate effect on the minimum presumptions under the act.

**Similarly, the UCSA magnifies the effect of manufacturer's price increases.**

Manufacturer's price increases have the same effects as excise tax increases; they automatically result in larger wholesale and retail mark-ups in absolute dollar terms. Thus, when the industry increased prices to pay for settlement of lawsuits filed by the states, these increases were automatically marked up by sellers who do not base their mark-ups on actual costs. Since the price hikes to pay for the state settlements were large (exceeding a dollar per pack), the UCSA essentially added a dime or more to the cost of the settlement to smokers. This, of course, benefitted wholesalers and retailers and offset their declining profits resulting from the reduced sales caused by the higher prices.

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<sup>43</sup> Various studies have observed this effect and suggested various theories for it. See, e.g., Jeffrey E. Harris, "The 1983 Increase in the Federal Cigarette Excise Tax," 1 *Tax Policy and the Economy* 87-111 (1987) (suggesting oligopolistic pricing). None of them, however, suggest that minimum pricing laws, such as the UCSA, are responsible.



## Appendix: Special Minimum Pricing Rules for Gray Market Cigarette Sales

The 2000 Legislature enacted a law that imposes minimum pricing rules on a special class of cigarettes—U.S. brand cigarettes manufactured in a foreign country or manufactured in the United States for sale in a foreign country.<sup>1</sup> This law is not part of the UCSA, although it refers to and requires UCSA minimum prices to apply. Moreover, it was enacted to address a problem that is distinctly different than that addressed by the UCSA—i.e., efforts by cigarette wholesalers to avoid the manufacturers' price increases used to fund their settlement agreements with the states. Because of the similarities to the UCSA, this appendix briefly describes the problem the law was designed to address and the provisions of the 2000 law.

### The Problem

The origins of the minimum price law lie in the price increases imposed by cigarette manufacturers to pay for settlement of the state-filed lawsuits. During the late 1990s, the tobacco companies settled lawsuits filed by state governments over the companies' liability for medical and related costs paid by the states that were caused by smoking. In order to pay for these settlements, cigarette manufacturers imposed a series of substantial price increases. The sum of these price increases, attributable to the settlements, exceeded \$1 per pack of 20 cigarettes.

U.S. manufacturers make and sell their U.S. brand cigarettes in foreign markets. Some of these cigarettes are manufactured in the United States and exported; others are manufactured in foreign countries by subsidiaries of the companies or licensees of the U.S. companies. When the manufacturers increased their domestic prices to pay for the state lawsuits, they did not similarly increase their prices in foreign markets. Their reasons for not doing so seem obvious. The foreign competitors of U.S. manufacturers would not have increased their prices, since they were not paying U.S. damage or settlement awards. If the U.S. companies had raised their prices in international markets (essentially spreading the cost of U.S. settlements across all their markets), their cigarettes would not be price competitive with foreign brands. Their local competitors in international markets would have had a significant price advantage.<sup>2</sup> The net result is a two-tier price structure for U.S. brand cigarettes: one price for the domestic or U.S. market and another (significantly lower) for international markets.<sup>3</sup>

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<sup>1</sup> 2000 Laws, ch. 496, § 2, subd. 1(c), to be codified at Minn. Stat. § 325D.421, subd. 1(c).

<sup>2</sup> In some cases, licensing agreements (with companies that manufacture and market their products in foreign countries) may have prevented them from doing so. This matters little; even if they could have done so legally, it would not have been a sensible business or marketing decision.

<sup>3</sup> Manufacturers also contend that the U.S. brands manufactured for sale in foreign countries have different formulations and, as a result, are different products (e.g., have different tastes and so forth). It is unclear to what extent this actually distinguishes the products and would affect consumers' willingness to buy them.

This situation created an opportunity for brokers or wholesalers to buy U.S. brand cigarettes that were intended for sale in foreign countries at the lower prices. The brokers would then resell them in the United States. This would defeat the manufacturers' efforts to maintain their two-tier price structures and to pass the full cost of the legal settlements onto U.S. smokers. The initial efforts focused on cigarettes manufactured in the United States for export. The brokers purchased this product (ideally) before it actually left the United States. This minimized transportation costs and any problems of freshness in the cigarettes. These U.S. brand cigarettes manufactured in the United States for export came to be called "gray market" cigarettes, referring to the fact that they had been manufactured for sale outside the United States. A change in federal law prohibited this practice<sup>4</sup> and the brokers turned to foreign manufactured cigarettes.

To stem the problem of gray market cigarettes, manufacturers contractually prohibited wholesalers from buying cigarettes directly from the manufacturer if they also purchased these gray market cigarettes. This prevented the large mainline wholesalers from selling these gray market cigarettes.

The practice also had the potential to affect payments under the settlement agreements. Under Minnesota's settlement, the payments from the tobacco companies were pegged to domestic sales (not Minnesota sales, but national sales). The multi-state settlement agreement is similar. As a result, sales of cigarettes manufactured for sale in foreign countries (whether manufactured in the United States or a foreign country) would not be counted in determining the companies' obligations under the settlements. Since the Minnesota market is a very small share of the total domestic market, gray market cigarettes sold in Minnesota were unlikely to have much of an effect on payments to Minnesota. However, manufacturers (who sought to maintain their two-tiered price structure) and wholesalers (who were prohibited by contracts with manufacturers from participating in the gray market) sought a legislative resolution of this issue

### Description of the Law

To address this situation, Laws 2000, chapter 496, imposes special minimum pricing rules for cigarettes that:

- Were first sold in the Minnesota market after January 1, 1998;<sup>5</sup> and
- Have trademarks, trade dress, and trade names that are confusingly similar to cigarettes that were sold in the Minnesota market before January 1, 1998.

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<sup>4</sup> 26 U.S.C. § 5754(a).

<sup>5</sup> The approach of tying the minimum pricing rules to cigarettes marketed after January 1, 1998 was adopted to avoid explicitly and exclusively imposing these special rules on foreign products or products moving in foreign commerce. By the nature of the situation, this law applies only to foreign cigarettes or U.S. cigarettes that were first exported. Under the foreign commerce clause, a law that was restricted to and imposed disadvantageous rules exclusively on a foreign product would likely be unconstitutional. The federal power over foreign commerce is nearly exclusive. See, e.g., *Zschernig v. Miller*, 389 U.S. 429 (1969).

These cigarettes must be sold at minimum prices that apply under the UCSA to the brands of cigarettes that were sold in Minnesota before January 1, 1998. This provision, in effect, requires gray market cigarettes and U.S. brand cigarettes that are manufactured outside of the United States to be priced equivalently to their U.S. counterparts. In effect, it legally mandates the manufacturer's two-tiered pricing structure by requiring UCSA pricing calculations to be made based on the manufacturer's invoice price for *domestic* cigarettes (not gray market or foreign cigarettes).

This law is enforced only by private causes of action for injunctive or other equitable relief or damages. A successful plaintiff may also recover attorney fees. The court may treble actual damages, if it finds the violation is "egregious." For minimum pricing violations, the court may award exemplary damages to a plaintiff equal to the amount charged below the permitted minimum price. Violations are also misdemeanors.

## The Toll of Tobacco in Alaska

### Tobacco Use in Alaska

High school students who smoke	33.9% (15,000)
Male high school students who use smokeless or spit tobacco	20.9% (females use much lower)
Kids (under 18) who become new daily smokers each year	2,200
Kids exposed to secondhand smoke at home	47,000
Packs of cigarettes bought or smoked by kids each year	3.0 million
Adults in Alaska who smoke	25.0% (105,000)

National youth smoking rates have declined somewhat since 1997, but remain at historically high levels. According to the National Youth Tobacco Survey, 28.4% of all U.S. high school kids smoke and 11.6% of high school males use spit tobacco. Adult smoking rates have decreased gradually since the 1980s, and 23.3% of U.S. adults now smoke.

### Deaths in Alaska From Smoking

Adults who die each year from their own smoking	740
Kids now under 18 and alive in Alaska who will ultimately die prematurely from smoking	19,500
Adults, children, & babies who die each year from others' smoking (secondhand smoke & pregnancy smoking)	80 to 150

Smoking kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined -- and thousands more die from other tobacco-related causes -- such as fires caused by smoking (more than 1,000 deaths/year nationwide) and smokeless tobacco use. No good estimates are currently available, however, for the number of Alaska citizens who die from these other tobacco-related causes, or for the much larger numbers who suffer from tobacco-related health problems each year without actually dying.

### Smoking-Caused Monetary Costs in Alaska

Annual health care costs in Alaska directly caused by smoking	\$132 million
- Portion covered by the state Medicaid program	\$60 million
Residents' state & federal tax burden from smoking-caused government expenditures	\$572 per household
Smoking-caused productivity losses in Alaska	\$129 million

Amounts do not include health costs caused by exposure to secondhand smoke, smoking-caused fires, spit tobacco use, or cigar and pipe smoking. Other non-health costs from tobacco use include residential and commercial property losses from smoking-caused fires (more than \$500 million per year nationwide); extra cleaning and maintenance costs made necessary by tobacco smoke and litter (about \$4+ billion nationwide for commercial establishments alone); and additional productivity losses from smoking-caused work absences, smoking breaks, and on-the-job performance declines and early termination of employment caused by smoking-caused disability or illness (dollar amount listed above is just from productive work lives shortened by smoking-caused death).

### Tobacco Industry Influence in Alaska

Annual tobacco industry marketing expenditures nationwide	\$9.7 billion
Estimated portion spent for Alaska marketing each year	\$21.4 million

Published research studies have found that kids are three times more sensitive to tobacco advertising than adults and are more likely to be influenced to smoke by cigarette marketing than by peer pressure, and that one-third of underage experimentation with smoking is attributable to tobacco company advertising.

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Alaskans for Tobacco-Free Kids

[Fwd: Hawaii Info]

Subject: [Fwd: Hawaii Info]  
Date: Thu, 27 Feb 2003 08:08:06 -0900  
From: Larry Persily <Larry\_Persily@revenue.state.ak.us>  
Organization: Department of Revenue  
To: Karen L Mccarthy <karen\_mccarthy@legis.state.ak.us>

Karen,

Our tobacco tax auditor gathered the following information from Hawaii, which instituted a tax stamp in 2001. We thought you and the senator would find it interesting.

Larry

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Subject: Hawaii Info  
Date: Thu, 27 Feb 2003 08:09:32 -0900  
From: Johanna Bales <Johanna\_Bales@revenue.state.ak.us>  
Organization: State of Alaska - Department of Revenue  
To: Larry Persily <Larry\_Persily@revenue.state.ak.us>  
CC: Larry Meyers <larry\_meyers@revenue.state.ak.us>, Toni R Thomas <toni\_thomas@revenue.state.ak.us>

Larry,

Yesterday, I spoke with Earl Hoke, an Asst. AG in Hawaii who heads up their cigarette stamp enforcement unit. As you probably know, Hawaii increased its cigarette excise tax rate to \$1.00 per pack in 1998. The following year, they passed legislation for a stamp which took effect on 1/1/2001. Hawaii cigarette tax revenues for 1999 - 2002 (calendar years) were as follows:

1999	\$39,697,384	(no stamp - tax at \$.05 per cigarette)
2000	\$40,770,139	(no stamp - tax at \$.05 per cigarette)
2001	\$61,282,238	(stamp - tax @ \$.05 per cigarette)
2002	\$64,892,155	(stamp - in Oct, 2002 tax rate increased to \$.06 per cigarette)

Incredibly, Hawaii shows a whopping 50% increase in cig tax revenues between 2000 and 2001. Hawaii does, however, have a very aggressive enforcement program. The unit that Earl heads up is staffed with 11 people; 3 attorneys, 5 investigators, 1 secretary, 1 paralegal, and 1 auditor. As well as stamp enforcement, they also enforce the tobacco Master Settlement Agreement (MSA) and the sale of gray market cigarettes. They do not sell the stamps or do anything else with the excise tax program. Those functions are handled by Hawaii's Department of Revenue. Earl's unit is funded by the first \$350,000 of MSA payments and 1.5% of the 1.7% stamp fee that is charged their distributors. Unlike all other states, Hawaii actually charges their distributors 1.7% of the value of the stamps. All other states give a discount.

I thought you might find this interesting.

Johanna

### Ranking of State Funding for Tobacco Prevention

State	FY 2003 Current Annual Funding	CDC's Annual Funding Recommendation (\$Millions)	Percent of CDC's Minimum Recommendation	Current Rank	Jan. 2002 Rank
Maine	\$15.17 million	11.19 - 25.35	Within CDC Guidelines	1	3
Minnesota	\$37.55 million	28.62 - 74.01	Within CDC Guidelines	2	5
Mississippi	\$20 million	18.79 - 46.80	Within CDC Guidelines	3	4
Maryland	\$30 million	30.30 - 78.60	Within CDC Guidelines	4	12
Hawaii	\$10.25 million	10.78 - 23.45	95.1%	5	27
Indiana	\$32.5 million	34.78 - 95.80	93.4%	6	6
Arkansas	\$16.39 million	17.91 - 46.45	91.6%	7	7
Pennsylvania	\$52 million	65.57 - 184.76	79.3%	8	14
Washington	\$26.24 million	33.34 - 89.38	78.7%	9	18
Virginia	\$22.2 million	38.87 - 106.85	66.7%	10	21
New Jersey	\$30 million	45.07 - 121.33	66.5%	11	11
Vermont	\$5.2 million	7.91 - 15.94	65.8%	12	10
Arizona	\$18.27 million	27.79 - 71.10	65.7%	13	2
Alaska	\$5 million	8.09 - 16.51	61.7%	14	28
Colorado	\$15 million	24.55 - 63.26	61.2%	15	19
Delaware	\$5 million	8.63 - 18.46	58.1%	16	13
California	\$88.35 million	165.10 - 442.40	53.5%	17	8
Nebraska	\$7 million	13.31 - 31.04	52.6%	18	17
Oregon	\$11.09 million	21.13 - 52.84	52.6%	19	16
Wisconsin	\$15.5 million	31.16 - 82.38	49.7%	20	20
Florida	\$37.5 million	78.33 - 221.26	47.8%	21	29
Utah	\$7 million	15.23 - 33.38	46.1%	22	26
Georgia	\$19.07 million	42.59 - 114.34	44.8%	23	22
Ohio	\$27 million	61.74 - 173.68	43.8%	24	31
New York	\$40 million	95.83 - 269.30	41.8%	25	24
West Virginia	\$5.85 million	14.16 - 35.37	41.2%	26	25
Wyoming	\$3 million	7.38 - 14.40	40.5%	27	28
New Mexico	\$5 million	13.71 - 31.95	36.5%	28	30
South Dakota	\$2.93 million	8.69 - 18.21	33.7%	29	34
Rhode Island	\$3.3 million	9.89 - 21.91	33.4%	30	32
Nevada	\$4.28 million	13.48 - 32.99	31.7%	31	33
North Dakota	\$2.5 million	8.16 - 16.55	30.5%	32	35
Louisiana	\$8 million	27.13 - 71.43	29.5%	33	47
New Hampshire	\$3 million	10.89 - 24.77	27.5%	34	37
Iowa	\$5.08 million	19.35 - 48.71	26.3%	35	22
Illinois	\$12 million	64.91 - 179.05	18.5%	36	9
North Carolina	\$6.2 million	42.59 - 118.63	14.6%	37	51
Massachusetts	\$4.8 million	35.24 - 92.76	13.6%	38	1
Texas	\$12.5 million	103.29 - 284.74	12.11%	39	39
Kentucky	\$3 million	25.09 - 69.90	12.0%	40	36
Idaho	\$1.27 million	11.04 - 24.09	11.6%	41	40
Oklahoma	\$2.45 million	21.83 - 56.31	11.2%	42	41
South Carolina	\$2 million	23.91 - 62.01	8.4%	43	42
Montana	\$384,000	9.36 - 19.68	4.1%	44	43
Kansas	\$500,000	18.05 - 44.69	2.8%	45	44
Connecticut	\$575,000	21.24 - 53.90	2.7%	46	45
Alabama	\$360,000	26.74 - 71.24	1.4%	47	46
Michigan	\$0	54.80 - 154.56	0.0%	51	51
Missouri	\$0	32.77 - 91.36	0.0%	51	51
Tennessee	\$0	32.23 - 89.08	0.0%	51	51
Washington, DC	\$0	7.48 - 14.57	0.0%	51	51

*Alaskans for Tobacco-Free Kids*



# MEYERCORD REVENUE

Providing Innovative Solutions For Protecting Revenue Worldwide

**System:** Meyercord Revenue offers industrial and government clients a wide range of high security solutions for protecting consumers and tax revenues from counterfeiters. Since the 1920s, we have designed counterfeit-resistant applications including cigarette tax stamps, motor vehicle registration and inspection labels, and product authentication seals.

**Equipment:**



Our secure facility is centrally located in metropolitan Chicago where we provide superior products and services that will meet and exceed your expectations. Meyercord Revenue's impressive list of anti-counterfeit solutions provide secure solutions to all of your product authentication needs.

Our competencies include specialized web printing producing high quality labels and applying unique coating chemistries. Meyercord Revenue's equipment includes the use of proprietary security taggants and the resources and equipment necessary to quickly apply these products accurately at scale.

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**Archive:** Meyercord Revenue's layered overt and covert security features are field proven. They continue to protect revenue through the manufacture of over 20 billion security indicia images a year. Our Fuson system is specified by over 100 state and municipal governments and is responsible for maximizing the annual collection of tax revenue worth over \$8.4 billion dollars.

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Meyercord Business - Tax Stamp Equipment



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For more than half a century Meyercord has been designing and manufacturing tax and fee indicia. Whether requiring a fully automatic stamping system or semi-automatic line, Meyercord cigarette s. Accessory equipment includes in-line and off-line cigarette case cutters and case packers. An exper

**Nationwide Field Service**

Meyercord's specially trained technicians are dedicated to keeping the equipment in the finest work



(Return to Equipment Page)

## 'A' Type Manual Stamping Machine

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### Machine Features

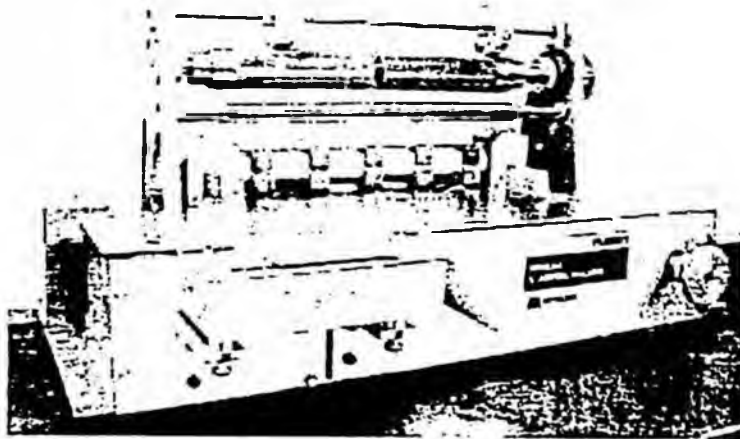
- Easy to operate - no special training or skills required.
- Stamps Regular, King, 100mm and 120mm cartons.
- Easily handles soft and box packs.
- The heater bar applies 10 Meyercord fusion stamps to a carton with one single motion.
- Front mounted glue pot for convenient resealing.
- Dependable, clean and quiet operation.
- Compact and portable. Can be operated on any sturdy table or work area.
- Reduces carton damages and labor costs; increases production.

### Specifications

**Dimensions:** Length - 20"  
Height - 11"  
Width - 10"

**Weight:** 40 lbs.

**Electrical Requirements:**  
120VAC; 20 AMPS



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## Automatic Tax Stamping Machine

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### Features

The automatic line provides maximum efficiency and production speed for the distributor whose d stamping large quantities of cigarettes hour after hour, day after day.

An operator places unopened cartons on a continuous belt that feeds the cigarettes automatically thr stamping operation, which includes carton opening, flap folding, stamp application, flap sealing and

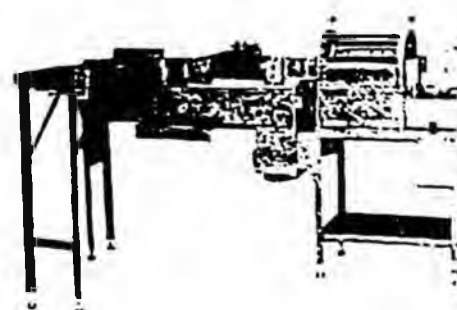
Stamped and sealed cartons are transferred automatically to a special table where a second opera emptied half cases.

### Specifications

**Dimensions:** Length - 13'6"  
Width - 3'11"

**Electrical  
Requirements:** 120VAC; 30 AMPS

**Output:** 80-100 Cartons Per Minute



[\(Return to Equipment Page\)](#)

## Linear Stamp Machine

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### Machine Features

- No operator adjustments for carton size changes, regular to 120mm.
- Programmable Logic Controller (PLC) equipped with state-of-the-art heating control.
- LCD screen with readouts for monitoring of most operations.
- Fully Automatic carton sizing, flap opening, stamping, bluing and closing operations.
- Heavy duty construction with industrial grade components.
- Improved stamping operation using standard stamp rolls.
- Automatic height adjustments minimizes carton and pack damage.
- Linear iron movement maximizes stamp transfer quality and virtually eliminates chopping.
- Eliminates iron heat variations and pack damage due to high heat conditions.
- Easy access to machine assemblies and controls for fast repairs and troubleshooting.

### Specifications

**Dimensions:** Length - 128"  
Height - 65" (74" with  
covers raised)  
Width - 68"

**Weight:** 1200 lbs.

**Electrical Requirements:** 120  
volts; 30 amps

**Air Requirements:** 90 PSI at  
1.7CFM

**Cycle Speed:** 40-48 CPM



May 1, 2003

Senate Finance Committee  
Alaska State Senate  
State Capitol, Room 518  
Juneau, AK 99801

RE: SB 168 Tobacco Tax Stamp Legislation

Dear Committee Members:

On behalf of Alaskan based wholesale tobacco distributors we would like to thank the Senate Labor and Commerce Committee for their deliberation and approval of SB 168, the Tobacco Tax Stamp bill. We were especially pleased that Senator Bunde was willing to support the inclusion of language providing for an Unfair Cigarette Sales Act as part of SB 168.

We support SB 168 (Labor & Commerce) as passed by the committee and we would ask the Senate Finance Committee to schedule this bill for consideration as soon as possible.

Alaska is one of only four states in the union that does not have a tobacco tax stamp. The implementation of a tax stamp will effectively stop the illegal importation of cigarettes into Alaska and will enhance state revenue. Alaska tobacco distributors will see an increase in sales as product presently being diverted to black market supply channels finds its way back into the legal supply chain through state-licensed distributors.

Alaska tobacco distributors routinely perform tax collection and reporting duties in support of their remittance to the State for the tobacco excise tax. In addition to the services already provided to the state the financial burden of the new tax stamp will also fall to the distributors. SB 168 provides Alaska licensed distributors with a much-earned discount for the purchase and application of the tobacco stamp. While the discount is beneficial, it supplants the current commission paid to distributors for services performed and the discount alone will not cover the cost of stamping for Alaska-based distributors.

SB 168 addresses the concerns of Alaska-based distributors with the inclusion of an Unfair Cigarette Sales Act. This measure would prohibit the sale of cigarettes below cost and is similar to legislation on the books in 25 other states. The prohibition of below-cost cigarette sales strengthens Alaska's stance on restricting youth access to tobacco products. The measure is vitally important to Alaska-based distributors because in addition to the youth access issue it creates a level playing field for those of us competing against large, national multi-state chain stores who are selling cigarettes at or below cost.

The Department of Revenue has estimated that for every 1% increase in cigarette tax collections the state will increase revenue by \$400,000. Several years ago when Michigan implemented a tax stamp they experienced an 8% growth in cigarette collections. Even if Alaska experiences only a modest 4% growth in tax collections the state should realize \$1,600,000 in revenue growth.

We believe that SB 168 is good legislation for the following reasons:

1. The state will experience an increase in tobacco tax collections
2. Alaska tobacco distributors will see increased business as black market distribution channels are shut down.
3. Alaska-based tobacco distributors will be able to compete on a level playing field with large out-of-state distributors employing predatory pricing practices.
4. Youth access to cigarettes will be further restricted as the State tightens control on the sale of below-cost sales of cigarettes.

On behalf of Alaska-based tobacco distributors we respectfully request that the Senate Finance Committee schedule this bill for a hearing as soon as possible and vote in support of this measure.

Thank you for your consideration.

Sincerely yours,

Bob Galosich  
Vice President of Wholesale Operations  
Alaska Commercial Company

Michael J. Elerding  
President  
Northern Sales Company of Alaska

**SB**

**168**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/28/03

MAY 5 2003

FURTHER:

DATE TURNED IN TO OFFICE: 5/5/03

SENATE FINANCE  
COMMITTEE

Finance Committee considered

SENATE BILL NO. 168

## SB 168 CIGARETTE SALE/DISTRIBUTION

"An Act relating to issuance and revocation of licenses for the importation, sale, distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions on shipping or transporting cigarettes; relating to records concerning the sale of cigarettes; amending and adding definitions relating to cigarette taxes; relating to the payment of cigarette taxes; relating to penalties applicable to cigarette taxes; relating to the definition of the wholesale price of tobacco products; relating to payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and sales; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 168 (FIN)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Law	4/15/03		✓	2
Rev	4/25/03	✓		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Adrian Taylor</i>	✓			
<i>Andrew Olson</i>			✓	
<i>Bill Blevins</i>	✓			
<i>Don Stevens</i>	✓			
COCHAIR:				
COCHAIR: <i>Conville</i>	✓			



# FISCAL NOTE

REPORTED DATE

MAY 5 2003

SENATE FINANCE  
COMMITTEE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB168(L&C)  
(S) Publish Date: 4/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Cigarette Sales / Distribution BRU: Revenue Operations  
Sponsor: Senate Labor and Commerce Component: Tax Division  
Requester: Senate Finance Committee Component Number: 2476

## Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	172.7	172.7	172.7	172.7	172.7	172.7
Travel	7.0	7.0	7.0	7.0	7.0	7.0
Contractual	43.5	39.0	39.0	39.0	39.0	39.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	26.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>251.7</b>	<b>220.7</b>	<b>220.7</b>	<b>220.7</b>	<b>220.7</b>	<b>220.7</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )	**	**	**	**	**	**
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## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	251.7	220.7	220.7	220.7	220.7	220.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>251.7</b>	<b>220.7</b>	<b>220.7</b>	<b>220.7</b>	<b>220.7</b>	<b>220.7</b>

Estimate of any current year (FY2002) cost: 0.0

### POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

### ANALYSIS: *(Attach a separate page if necessary)*

\*\* There will be a decrease in revenues to the state due to the higher commission paid to licensees (as a discount on cigarette taxes) to compensate them for the cost of affixing the stamp to cigarette packages, collecting the tax and remitting it to the department. The department estimates this tax revenue decrease could be \$251,000 a year (see Page 2). However, there will be a revenue gain to the state from this legislation, likely equal to or greater than the lost revenue, because of the tax enforcement benefits. The net result could likely be an increase in tobacco tax revenues.

The department anticipates that a cigarette stamp program will increase compliance with the state's cigarette tax laws, and therefore result in higher tax revenues to the state. Unfortunately, it is not possible to predict how much additional revenue might be generated for the state from the tax stamp program.

*(See second page for additional analysis)*

Prepared by: Johanna Bales Phone 269-6628  
Division: Tax Division Date/Time 4/25/03 10:30 AM  
Approved by: Larry Persily, Deputy Commissioner Date 4/25/2003  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

**Department of Revenue**

**CSSB168(L&C) FN #1 Page 2 of 2- Bill Analysis (April 25, 2003)**

**Assumptions:** This fiscal note assumes that 40 million to 50 million packs of cigarettes will be sold each year. This is consistent with annual sales in recent years.

**Effect of Legislation:** The program will consist of the annual purchase of tax stamps from a stamp manufacturer and the subsequent sale of those stamps by the state to cigarette licensees. The program will also include enforcement of the stamping requirements, as well as a ban on shipping cigarettes to certain persons in the state and prohibiting cigarette wholesalers and retailers from selling cigarettes below cost. The law would allow individuals and businesses to bring civil action in court to settle disputes over the unfair cigarette sales provision in this legislation.

**Positions:** The department expects that it will need three additional positions to handle the purchase, sale, administration and enforcement of the new tax stamp program and cigarette shipping restrictions. Enforcement includes conducting audits and other investigations to ensure that stamps are properly affixed to cigarettes, that cigarettes are not improperly shipped into or within the state, and that wholesalers and retailers do not sell cigarettes below cost. These positions will also be responsible for the seizure and security of unstamped product and its ultimate destruction. For this type of work, the department expects it will need a full-time Revenue Auditor III (Range 18) at an expected annual cost of \$62,500, an Investigator III (Range 18) at an expected annual cost of \$62,500, and a full-time Tax Technician III (Range 14) at an expected annual cost of \$47,700.

**Other Operating Expenditures:** In the first year, approximately \$10,000 will be needed for two fireproof safes; \$16,500 for three computers, software and work stations; \$7,000 for travel expenses; \$2,000 for supplies; \$3,000 for advertising costs and IT charges; and \$40,500 for stamp design and printing. Printing of stamps in all future years will cost approximately \$36,000; with supplies at \$2,000; travel at \$7,000; and IT and phone charges at \$3,000.

**Revenue:** The department is unable to estimate the amount of additional revenue that may be generated as a result of the tax stamp. Other states that recently adopted a cigarette tax stamp program have found that the stamps significantly increased their tax revenues. Michigan reported an 8.7 percent increase in cigarette taxes in the first year of its program in 1999. The most current reports from Hawaii indicate an amazing 50 percent increase in tax collections. Although these results from other states are encouraging, we do not have a reliable basis to predict the size of the effect of cigarette tax stamps on revenue in Alaska. However, for every 1% increase in cigarette tax collections, Alaska revenue would increase by approximately \$400,000. An increase of just 1.25% in tax collections would be enough to cover the Department of Revenue's costs of this legislation, including the additional discount to licensees described below.

**Commission (discount to licensees):** All other states, except Hawaii, allow licensees to purchase stamps at a discount. The current national average discount is approximately 3%. This bill allows for a discount of 3% on the first \$1 million in stamps purchased by each licensee and 2% on the second \$1 million in stamps purchased by each licensee. There is no discount on purchases in excess of \$2 million in stamp purchases. The current tobacco statute allows a commission of 0.4% to licensees as compensation for collecting the tax and remitting it to the department. This commission would be replaced by the stamp discount. Based on FY 2002 tax filings, we estimate that the inclusion of a stamp discount and removal of the commission as a result of this bill would decrease revenues by approximately \$251,000 annually.

**Cost Increase to Licensees:** Licensees will incur increased costs to place stamps on cigarette packages, and it is possible that those costs could be in excess of the compensation given to licensees by the discount on their purchase of tax stamps. Depending on whether a licensee leases or purchases a tax stamp machine, and depending on whether it is a manual or an automatic machine, and depending on the licensee's volume of sales, the Department estimates the net cost of compliance at approximately one penny per pack of cigarettes.

# FISCAL NOTE

MAY 5 2003

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: SB 168  
 (S) Publish Date: 4/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title: "... relating to issuance and revocation of BRU Criminal Division; Civil Division  
licenses ... cigarettes and tobacco products ..." Component 1st-4th Judicial Districts; Criminal  
 Sponsor: Senate Labor and Commerce Committee Appeals/Special Lit; Commercial  
 Requester: Senate Labor and Commerce Committee Component No. 2198-99;2201/03/61/79/11

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This bill is intended to aid in the enforcement of the tobacco tax by requiring a tax stamp be applied to every pack of cigarettes sold in Alaska to show that the tax was paid. Unstamped cigarettes could be seized and destroyed by state enforcement personnel. The bill also allows the imposition of significant civil penalties and criminal liability upon violators. In addition, the bill would make several changes to improve the tobacco product licensing statutes.

The Department of Law's Civil Division would be responsible for providing legal assistance to the Department of Revenue when it seeks civil penalties for violations of this bill, and in defending the department's decisions to revoke a merchant's deferred payment rights. The Criminal Division would be responsible for any criminal prosecutions arising out of violations of this act. We anticipate, however, that the additional responsibilities would not cause a significant enough increase in Law's workload to warrant an increased appropriation.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division: Attorney General's Office Date/Time 4/15/03 9:03 AM  
 Approved by: Kathryn Daughhetea for Gregg D. Renkes, Attorney General Date 4/15/2003  
 Agency: Department of Law

CS FOR SENATE BILL NO. 168(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to issuance and revocation of licenses for the importation, sale,  
2 distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund  
3 or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions  
4 on and penalties for shipping or transporting cigarettes; relating to records concerning  
5 the sale of cigarettes; amending and adding definitions relating to cigarette taxes;  
6 relating to the payment of cigarette taxes; relating to penalties applicable to cigarette  
7 taxes; relating to the definition of the wholesale price of tobacco products; relating to  
8 payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions  
9 making certain cigarettes contraband and subject to seizure and forfeiture; relating to  
10 certain crimes, penalties, and interest concerning tobacco taxes and stamps; relating to  
11 cigarette sales; and providing for an effective date."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

1 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
2 to read:

3 SHORT TITLE. AS 43.50.710 - 43.50.849, enacted in sec. 17 of this Act, may be  
4 known as the Unfair Cigarette Sales Act.

5 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 INTENT OF AS 43.50.710 - 43.50.849. It is the intent of AS 43.50.710 - 43.50.849,  
8 enacted in sec. 17 of this Act, to

9 (1) encourage fair and honest competition and to safeguard the public against  
10 unfair, dishonest, deceptive, destructive, and fraudulent business practices existing in  
11 transactions involving the sale of, offer to sell, or inducement to sell cigarettes in the  
12 wholesale and retail trades in the state;

13 (2) prohibit the advertising, offering for sale, or sale of cigarettes below cost  
14 in the wholesale or retail trades with the intent of injuring competitors or destroying or  
15 substantially lessening competition as an unfair and deceptive trade practice; and

16 (3) promote the general welfare and public interest through the prohibition of  
17 unfair cigarette sales.

18 \* **Sec. 3.** AS 43.50.035 is amended to read:

19 Sec. 43.50.035. **Wholesaler-distributor license.** A person outside of this  
20 state who sells cigarettes into this state and is not required to be licensed under  
21 AS 43.50.010 may apply [QUALIFY] for a wholesaler-distributor license [BY  
22 FURNISHING A GOOD AND SUFFICIENT SURETY BOND IN AN AMOUNT  
23 EQUAL TO TWICE THE AVERAGE MONTHLY RETURN AND IN NO CASE  
24 LESS THAN \$5,000, PAYABLE TO THE DEPARTMENT AND APPROVED BY  
25 THE DEPARTMENT OF LAW. IF A WHOLESALER-DISTRIBUTOR FAILS TO  
26 PAY THE CIGARETTE TAX WHEN DUE, THE BOND MAY BE FORFEITED  
27 AND THE LICENSE REVOKED]. The department shall adopt reasonable  
28 regulations necessary for the collection of cigarette taxes on cigarette sales made  
29 by the [MAY ISSUE PERMITS IN PLACE OF BONDS TO RESIDENT HOLDERS  
30 OF] wholesaler-distributor licensee into this state and standards for

31 (1) application and issuance of the license; and

1                    (2) refusal to issue the license [LICENSES DOING BUSINESS  
2                    WHOLLY IN THE STATE WHO PAY THE TAX BEFORE SHIPMENT].

3 \* Sec. 4. AS 43.50.040 is amended to read:

4                    **Sec. 43.50.040. Expiration of licenses.** A license issued under AS 43.50.010  
5                    or 43.50.035 expires on June 30 [,] following the date of issue. If a license is revoked,  
6                    or the business for which the license is issued changes ownership or the licensee  
7                    changes the place of business from the premises covered by the license, the licensee  
8                    shall immediately return the license to the department. If the licensee moves the  
9                    business to another location in the state, the license shall, upon the payment of a fee of  
10                    50 cents, be reissued for the new location for the balance of the unexpired term.  
11                    Before a license issued under AS 43.50.010 or 43.50.035 expires, the [THE]  
12                    licensee may apply to [, ON APPLICATION TO THE DEPARTMENT  
13                    ACCOMPANIED BY THE RENEWAL FEE, MAY, BEFORE THE EXPIRATION  
14                    OF THE LICENSE,] renew the license for one year from the expiration date of the  
15                    license. The renewal fee required by AS 43.50.030 must accompany the  
16                    application. The department shall adopt reasonable regulations that it considers  
17                    necessary regarding the renewal of licenses.

18 \* Sec. 5. AS 43.50.070 is amended to read:

19                    **Sec. 43.50.070. Suspension or revocation of or refusal to renew a license**  
20                    [REVOCAION OF LICENSES]. The department may suspend, [OR] revoke, or  
21                    refuse to renew a license issued under this chapter [AS 43.50.010 - 43.50.180] (1)  
22                    for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of this  
23                    chapter [AS 43.50.010 - 43.50.180] or a regulation of the department adopted under  
24                    this chapter [AS 43.50.010 - 43.50.180]; (2) if a licensee ceases to act in the capacity  
25                    for which the license was issued; or (3) if a licensee [MANUFACTURER,  
26                    DISTRIBUTOR, OR WHOLESALE DISTRIBUTOR] negligently sells tobacco or  
27                    products containing tobacco to a person who is required to, but does not, hold a  
28                    license endorsement under AS 43.70.075 or [NONLICENSED RETAILER OR A  
29                    RETAILER] whose license endorsement under AS 43.70.075 has been suspended. A  
30                    person whose license is suspended or revoked may not sell cigarettes or tobacco  
31                    products, or permit cigarettes or tobacco products to be sold, during the period of

1 the suspension or revocation on the premises occupied or controlled by that person. A  
 2 disciplinary proceeding or action is not barred or abated by the expiration, transfer,  
 3 surrender, renewal, or extension of a license issued under this chapter [AS 43.50.010  
 4 - 43.50.180]. The department shall comply with the provisions of AS 44.62 ( [THE]  
 5 Administrative Procedure Act), except that a hearing officer of the department,  
 6 rather than a hearing officer assigned under AS 44.62.350, may conduct hearings  
 7 [(AS 44.62)].

8 \* Sec. 6. AS 43.50.070 is amended by adding a new subsection to read:

9 (b) In this section, "licensee" means a person licensed under AS 43.50.010 -  
 10 43.50.180 or 43.50.300 - 43.50.390.

11 \* Sec. 7. AS 43.50.090(a) is amended to read:

12 (a) There is levied an excise tax of 38 mills on each cigarette imported or  
 13 acquired in the state. The tax shall be paid through the use of stamps as provided  
 14 in AS 43.50.500 - 43.50.700. The failure to pay the tax through the use of stamps  
 15 does not relieve a person of the obligation to pay taxes due under this chapter.  
 16 The person shall still pay the tax, and the tax is due on or before the end of the  
 17 month following the month in which cigarettes were manufactured, imported,  
 18 acquired, or sold in this state [EACH LICENSEE SHALL, AT THE TIME OF  
 19 FILING THE RETURN REQUIRED BY AS 43.50.080, PAY TO THE  
 20 DEPARTMENT THE EXCISE FOR THE CALENDAR MONTH COVERED BY  
 21 THE RETURN, DEDUCTING FOUR-TENTHS OF ONE PERCENT OF THE  
 22 TOTAL TAX DUE, WHICH THE LICENSEE SHALL RETAIN TO COVER THE  
 23 EXPENSE OF ACCOUNTING AND FILING RETURNS]. Cigarettes upon which  
 24 the excise is imposed are not again subject to the excise when acquired by another  
 25 person.

26 \* Sec. 8. AS 43.50.100(d) is amended to read:

27 (d) A person or licensee who is in control or possession of cigarettes contrary  
 28 to this chapter [AS 43.50.010 - 43.50.180,] or who offers to sell or dispose of  
 29 cigarettes to others for the purpose of resale without being licensed to do so is  
 30 considered to have possession of the cigarettes as a consumer and is personally liable  
 31 for the cigarette taxes imposed by this chapter [TAX], plus a penalty of 100 percent

1 [PER CENT].

2 \* **Sec. 9.** AS 43.50 is amended by adding a new section to read:

3 **Sec. 43.50.105. Restrictions on shipping or transporting cigarettes.** (a) A  
4 person who is not licensed under this chapter may not ship or cause to be shipped  
5 cigarettes to a person in this state unless the person receiving the cigarettes is

6 (1) licensed under this chapter;

7 (2) an operator of a customs bonded warehouse under 19 U.S.C. 1311  
8 or 19 U.S.C. 1555; or

9 (3) an instrumentality of the federal government or an Indian tribal  
10 organization authorized by law to possess cigarettes not taxed under this chapter.

11 (b) A person who is licensed under this chapter may not ship or cause to be  
12 shipped cigarettes to a person in this state unless the person receiving the cigarettes

13 (1) is licensed under this chapter;

14 (2) holds a tobacco endorsement under AS 43.70.075;

15 (3) is an operator of a customs bonded warehouse under 19 U.S.C.  
16 1311 or 19 U.S.C. 1555; or

17 (4) is an instrumentality of the federal government or an Indian tribal  
18 organization authorized by law to possess cigarettes not taxed under this chapter.

19 (c) A common or contract carrier may not knowingly transport cigarettes to a  
20 person in this state unless the person

21 (1) shipping the cigarettes is licensed under this chapter and provides  
22 the common or contract carrier with a copy of the person's current license issued by  
23 the department and the person receiving the cigarettes is a person described under  
24 (b)(1) - (4) of this section; or

25 (2) receiving the cigarettes is a person described under (a)(2) or (3) of  
26 this section or is licensed under this chapter and provides the common or contract  
27 carrier with a copy of the person's current license issued by the department.

28 (d) If the cigarettes are transported by a common or contract carrier to a home  
29 or residence, it is rebuttably presumed that the common or contract carrier knew that  
30 the person receiving the cigarettes was not a person described under (b)(1) - (4) of this  
31 section.



1 (e) A person, other than a common or contract carrier, may not knowingly  
2 transport cigarettes to a person in this state, unless the person receiving the cigarettes  
3 is a person described under (b)(1) - (4) of this section.

4 (f) A person who ships or causes to be shipped cigarettes to a person in this  
5 state shall plainly and visibly mark the container or wrapping with the word  
6 "cigarettes" if the cigarettes are shipped in a container or wrapping other than the  
7 cigarette manufacturer's original container or wrapping.

8 (g) A person who violates the provisions of this section is guilty of a

9 (1) class A misdemeanor if the person unlawfully ships, causes to be  
10 shipped, or transports at least one but fewer than 1,000 cigarettes;

11 (2) class C felony if the person unlawfully ships, causes to be shipped,  
12 or transports 1,000 or more cigarettes.

13 (h) In addition to the criminal penalty under (g) of this section, the department  
14 may assess a civil fine of not more than \$5,000 for each violation of this section.

15 \* Sec. 10. AS 43.50.130(d) is amended to read:

16 (d) An invoice for the sale of cigarettes given or accepted by a licensee under  
17 this chapter [AS 43.50.010 - 43.50.180] must state whether the taxes [TAX] imposed  
18 by this chapter have [AS 43.50.010 - 43.50.180 HAS] been paid.

19 \* Sec. 11. AS 43.50.170(7) is amended to read:

20 (7) "person" includes an individual, company, partnership, limited  
21 liability partnership, joint venture, joint agreement, limited liability company,  
22 association, mutual or otherwise, corporation, estate, trust, business trust, receiver,  
23 trustee, syndicate, or political subdivision of this state, or combination acting as a unit;

24 \* Sec. 12. AS 43.50.170 is amended by adding new paragraphs to read:

25 (11) "tobacco product" has the meaning given in AS 43.50.390;

26 (12) "wholesaler-distributor" means a person outside this state who  
27 sells or distributes cigarettes into this state and who is not required to be licensed  
28 under AS 43.50.010.

29 \* Sec. 13. AS 43.50.190(b) is amended to read:

30 (b) The tax levied by this section is in addition to the tax levied by  
31 AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same

1 manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the  
 2 tax shall be deposited in the general fund. The penalties provided in AS 43.05 and  
 3 this chapter apply to the tax levied in this section.

4 \* **Sec. 14.** AS 43.50.320(f) is amended to read:

5 (f) The department may suspend, [OR] revoke, or refuse to renew a license  
 6 issued under this section as provided in AS 43.50.070 [IF THE LICENSEE  
 7 VIOLATES A PROVISION OF AS 43.50.300 - 43.50.390 OR A REGULATION  
 8 ADOPTED UNDER AS 43.50.370].

9 \* **Sec. 15.** AS 43.50 is amended by adding a new section to read:

10 **Sec. 43.50.335. Tax credits and refunds.** The department shall adopt  
 11 procedures for a refund or credit to a licensee of the tax paid for tobacco products that  
 12 have become unfit for sale, are destroyed, or are returned to the manufacturer for  
 13 credit or replacement if the licensee provides proof acceptable to the department that  
 14 the tobacco products have not been and will not be consumed in this state.

15 \* **Sec. 16.** AS 43.50.390(5) is repealed and reenacted to read:

16 (5) "wholesale price" means

17 (A) the established price for which a manufacturer sells a  
 18 tobacco product to a distributor after deduction of a discount or other reduction  
 19 received by the distributor for quantity or cash if the manufacturer's established  
 20 price is adequately supported by bona fide arm's length sales as determined by  
 21 the department; or

22 (B) the price, as determined by the department, for which  
 23 tobacco products of comparable retail price are sold to distributors in the  
 24 ordinary course of trade if the manufacturer's established price does not meet  
 25 the standards of (A) of this paragraph.

26 \* **Sec. 17.** AS 43.50 is amended by adding new sections to read:

27 **Article 5. Cigarette Tax Stamps.**

28 **Sec. 43.50.500. Tax payment by use of stamps.** A licensee shall pay the tax  
 29 imposed under AS 43.50.090(a) and 43.50.190(a) through the use of stamps issued  
 30 under AS 43.50.500 - 43.50.700.

31 **Sec. 43.50.510. Stamp design; manner of affixing.** (a) The department shall

1 design and furnish stamps of sizes and denominations as determined by the  
2 department.

3 (b) Notwithstanding the packaging requirements of AS 43.70.075(g)(1), a  
4 stamp required under AS 43.50.500 - 43.50.700 must be affixed

5 (1) on the smallest package that will be handled, sold, used, consumed,  
6 or distributed in this state; and

7 (2) in a denomination equal to the amount of tax due under this chapter  
8 on the cigarettes in the package.

9 (c) A stamp required under AS 43.50.500 - 43.50.700 shall be affixed to the  
10 bottom of each individual package of cigarettes in a manner so that the stamp cannot  
11 be removed from the package without being mutilated or destroyed.

12 (d) For purposes of this section, a stamp is considered affixed only if more  
13 than 80 percent of the stamp is attached to the individual package in accordance with  
14 (c) of this section and regulations adopted by the department.

15 **Sec. 43.50.520. Stamp required before sale, distribution, or consumption.**

16 (a) Except as provided in AS 43.50.580, a licensee or the authorized agent or designee  
17 of the licensee shall affix a stamp, in the manner required by AS 43.50.510, to each  
18 package of cigarettes immediately upon the opening of the shipping container  
19 containing the package and before sale, distribution, or consumption in this state.

20 (b) Except as provided in AS 43.50.580 and 43.50.610, a person may not  
21 engage in the following activities in this state unless the package containing the  
22 cigarettes is affixed with the required stamp:

23 (1) sell or distribute cigarettes to a person who is a consumer in this  
24 state;

25 (2) acquire, hold, own, possess, or transport cigarettes for sale or  
26 distribution in this state;

27 (3) import or cause to be imported cigarettes into this state for sale,  
28 distribution, or consumption; or

29 (4) place or store cigarette packages in a vending machine in this state.

30 **Sec. 43.50.530. Sale of stamps.** (a) The department shall furnish stamps for  
31 sale to licensees.

1 (b) The department may enter into agreements with financial institutions to  
2 permit the sale of stamps by those institutions. The department shall make a list of  
3 financial institutions authorized to sell stamps under this section available to the  
4 public.

5 **Sec. 43.50.540. Purchase of and payment for stamps.** (a) A licensee shall  
6 apply to the department or a financial institution authorized under AS 43.50.530(b) to  
7 purchase stamps required by AS 43.50.500 - 43.50.700.

8 (b) A licensee may authorize an agent or designee to purchase stamps for the  
9 licensee at a location where stamps are sold. The licensee's authorization of an agent  
10 or designee must be in writing and must be signed by the licensee. The licensee shall  
11 provide a copy of the authorization to the department. The authorization continues in  
12 effect until the department receives the licensee's written notice of revocation of the  
13 authorization.

14 (c) Except as otherwise provided in this subsection, each stamp shall be sold  
15 to a licensee at its denominated value less the discount provided in this subsection.  
16 The discount under this subsection is provided as compensation for affixing stamps to  
17 packages as required by AS 43.50.500 - 43.50.700. The department may reduce or  
18 eliminate the discount to a licensee under this subsection if the licensee fails to meet  
19 the requirements of AS 43.50.500 - 43.50.700. The discount under this subsection is  
20 equal to the sum of the amounts calculated using the following percentages of  
21 denominated value of stamps purchased by a licensee under this section in a calendar  
22 year:

23 (1) \$1,000,000 or less, three percent;

24 (2) the amount that is more than \$1,000,000 but not more than  
25 \$2,000,000, two percent;

26 (3) the amount that is over \$2,000,000, zero percent.

27 (d) Payment for stamps shall be made at the time of purchase, except that the  
28 department may permit a licensee to defer payments as provided in AS 43.50.550.

29 (e) The licensee or the licensee's agent or designee must obtain the stamps in  
30 person from the department or a financial institution authorized to sell stamps under  
31 AS 43.50.530(b). Alternatively, the licensee may request in writing that the stamps be

1 shipped or transported in a manner specified by the licensee that is acceptable to the  
2 department. The department may accept only United States mail or common or  
3 private carrier as a shipping or transportation method.

4 (f) Title to the stamps passes immediately to the licensee at the time the  
5 stamps are obtained in person or, if the stamps are shipped or transported, at the time  
6 the stamps are placed in the United States mail or received by the common or private  
7 carrier. The licensee bears all costs associated with shipping or transporting the  
8 stamps and all risks of possible loss or damage while in transit.

9 (g) Loss, destruction, or theft of stamps does not absolve the licensee of its  
10 obligation to make payment for the stamps, including payment on a deferred-payment  
11 basis under AS 43.50.550.

12 (h) For purposes of the discount provided in (c) of this section, "stamps  
13 purchased by a licensee" includes stamps purchased by affiliated licensees.

14 **Sec. 43.50.550. Deferred-payment basis for stamps.** (a) A licensee may  
15 apply to the department to purchase stamps on a deferred-payment basis. Upon  
16 receipt of the application and the bond required under (b) of this section, the  
17 department may set the maximum dollar amount of stamps that the licensee is  
18 authorized to purchase on a deferred-payment basis in a calendar month.

19 (b) A licensee who submits an application for the purchase of stamps on a  
20 deferred-payment basis shall post a bond acceptable to the department in an amount  
21 equal to 200 percent of the maximum dollar amount of allowed monthly purchases  
22 under this section as a condition of approval of the application.

23 (c) Amounts owing for stamps purchased on a deferred-payment basis in a  
24 calendar month are due on or before the last day of the next calendar month. Payment  
25 shall be made by a remittance acceptable to the department that is made payable to the  
26 department.

27 (d) The department may designate the sales locations where the licensee may  
28 make purchases of stamps on a deferred-payment basis and fix the dollar amount of  
29 purchases that the licensee may make under this section at each designated sales  
30 location each month.

31 **Sec. 43.50.560. Suspension of deferred-payment basis privilege.** The

1 department may suspend, without prior notice, a licensee's privilege to purchase  
 2 stamps on a deferred-payment basis or may reduce the monthly dollar amount of  
 3 purchases the licensee may make under AS 43.50.550 if

- 4 (1) the licensee fails to pay for stamps when payment is due;  
 5 (2) the licensee's bond is cancelled or becomes void, impaired, or  
 6 unenforceable;  
 7 (3) the department determines that the collection of an amount unpaid  
 8 or due from the licensee under this chapter is jeopardized; or  
 9 (4) the licensee violates a state statute or regulation related to the  
 10 collection of taxes under this chapter.

11 **Sec. 43.50.570. Interest.** A licensee who fails to pay an amount due for the  
 12 purchase of stamps within the time required

- 13 (1) is considered to have failed to pay the cigarette taxes due under this  
 14 chapter; and  
 15 (2) shall pay interest at the rate established under AS 43.05.225 from  
 16 the date on which the amount became due until the date of payment.

17 **Sec. 43.50.580. Possession of unstamped cigarettes.** (a) Except as provided  
 18 in (b) of this section and in AS 43.50.610, a person may not possess unstamped  
 19 cigarettes in this state.

20 (b) A licensee may possess unstamped cigarettes in this state if

- 21 (1) the licensee posts a surety bond in an amount satisfactory to the  
 22 department to ensure performance of its duties under this chapter; and  
 23 (2) unstamped cigarettes are necessary for the conduct of the licensee's  
 24 business in making sales or distributions to an instrumentality of the federal  
 25 government or an Indian tribal organization authorized by law to possess cigarettes not  
 26 taxed under this chapter.

27 (c) At the time of shipping or delivering cigarettes to an instrumentality of the  
 28 federal government or an Indian tribal organization authorized by law to possess  
 29 cigarettes not taxed under this chapter, a licensee shall make a duplicate invoice  
 30 showing complete details of the shipment or other distribution and a statement  
 31 indicating whether stamps were affixed to each cigarette package in accordance with

1 AS 43.50.500 - 43.50.700. The licensee shall transmit the duplicate invoice to the  
2 department as an attachment to the monthly report required under AS 43.50.630.

3 (d) If a licensee who is authorized to possess unstamped cigarettes under (b)  
4 of this section fails to comply with the requirements of this section, the licensee is no  
5 longer authorized to and may not possess unstamped cigarettes under this section and  
6 is subject to the imposition of any applicable penalty under this title or other law.

7 (e) For purposes of (a) of this section, "person" does not include entities to  
8 whom sales or distributions are made as described in (b)(2) of this section.

9 **Sec. 43.50.590. Refunds or credits for unused stamps and for unsalable,  
10 destroyed, or certain returned cigarette packages.** (a) The department shall adopt  
11 procedures for a refund or credit to a licensee in the amount of the denominated value,  
12 less the discount given under AS 43.50.540, for

13 (1) unused or damaged stamps; or

14 (2) stamps affixed to cigarette packages that have become unfit for use  
15 or sale, are destroyed, or are returned to the manufacturer for credit or replacement if  
16 the licensee provides proof acceptable to the department that the cigarettes have not  
17 been and will not be consumed in this state.

18 (b) A refund or credit under (a) of this section may not be allowed for stamps  
19 affixed to cigarette packages in violation of this chapter or AS 45.53.

20 **Sec. 43.50.600. Stamps prohibited on cigarette packages not complying  
21 with federal and state laws.** A licensee or the licensee's authorized agent or designee  
22 may not affix a stamp to a cigarette package if the cigarettes

23 (1) may not be acquired, held, owned, imported, possessed, sold, or  
24 distributed in this state under AS 43.50.400; or

25 (2) are not in compliance with other state or federal laws.

26 **Sec. 43.50.610. Unstamped cigarettes as contraband; seizure.** Unstamped  
27 cigarettes found in this state are contraband and may be seized by the commissioner or  
28 an agent or employee of the commissioner or by any peace officer of the state, unless

29 (1) the cigarettes are

30 (A) in the possession of a licensee or are in transit from outside  
31 the state and are consigned to a licensee; and

1 (B) in the original and unopened shipping container; or  
 2 (2) possession of the unstamped cigarettes is not a violation of this  
 3 chapter.

4 **Sec. 43.50.620. Forfeiture and destruction of seized cigarettes.** Cigarettes  
 5 seized under AS 43.50.500 - 43.50.700 are forfeited to the state. After notice and an  
 6 opportunity for a hearing, the commissioner shall destroy the cigarettes forfeited under  
 7 this section.

8 **Sec. 43.50.630. Monthly reports; records retention; inspection of records.**

9 (a) On or before the last day of each calendar month, a licensee shall file the  
 10 following information for each place of business with the department, on a form or in  
 11 a format prescribed by the department:

12 (1) the quantity and brands of cigarettes manufactured, imported,  
 13 acquired, or sold in the state during the preceding calendar month;

14 (2) the number and dollar amount of stamps

15 (A) purchased during the preceding calendar month;

16 (B) affixed to cigarette packages during the preceding calendar  
 17 month;

18 (C) not affixed to cigarette packages and on hand at the end of  
 19 the preceding calendar month; and

20 (D) refunded or credited to a licensee under AS 43.50.590; and

21 (3) any other information that the department requires to carry out its  
 22 duties under this chapter.

23 (b) If a licensee ceases to manufacture, import, acquire, or sell cigarettes in  
 24 this state, the licensee shall immediately file the form required under (a) of this section  
 25 with the department, for the period ending with the cessation.

26 (c) All statements and other records required by AS 43.50.500 - 43.50.700  
 27 must be

28 (1) in a form or format prescribed by the department;

29 (2) preserved by a licensee for a period of three years; and

30 (3) available for inspection at any time upon oral or written demand by  
 31 the department or its authorized agent.



1 (d) A summary of information filed under (a) of this section shall be prepared  
2 by the department and released to the public upon request.

3 **Sec. 43.50.640. Misconduct involving unstamped cigarettes or stamps in**  
4 **the first degree.** (a) A person commits the crime of misconduct involving unstamped  
5 cigarettes or stamps in the first degree if the person

6 (1) with reckless disregard that the cigarettes are unstamped

7 (A) sells or distributes 1,000 or more unstamped cigarettes in a  
8 single transaction;

9 (B) owns or possesses 1,000 or more unstamped cigarettes with  
10 the intent to sell; or

11 (C) acquires, holds, transports, imports, or possesses 10,000 or  
12 more unstamped cigarettes; or

13 (2) with reckless disregard that the stamp was previously affixed to  
14 another cigarette package;

15 (A) affixes a previously used stamp to a cigarette package; or

16 (B) possesses, sells, or distributes a previously used stamp.

17 (b) Misconduct involving unstamped cigarettes or stamps in the first degree is  
18 a class C felony.

19 **Sec. 43.50.650. Misconduct involving unstamped cigarettes or stamps in**  
20 **the second degree.** (a) A person commits the crime of misconduct involving  
21 unstamped cigarettes or stamps in the second degree if the person

22 (1) with reckless disregard that the cigarettes are unstamped

23 (A) sells or distributes at least one but less than 1,000  
24 unstamped cigarettes in a single transaction;

25 (B) owns or possesses at least one but less than 1,000  
26 unstamped cigarettes, with intent to sell; or

27 (C) acquires, holds, transports, imports, or possesses at least  
28 one but less than 10,000 unstamped cigarettes; or

29 (2) is not licensed under this chapter or otherwise authorized by the  
30 department to possess stamps and possesses a stamp that is not affixed to a cigarette  
31 package.

1 (b) Misconduct involving unstamped cigarettes or stamps in the second degree  
2 is a class A misdemeanor.

3 **Sec. 43.50.660. Construction of criminal statutes.** (a) The provisions of  
4 AS 11.16, AS 11.81.600, 11.81.610, and 11.81.900 apply to AS 43.50.640 and  
5 43.50.650.

6 (b) For purposes of AS 43.50.640 and 43.50.650, display of cigarettes by a  
7 person, or possession other than in the original and unopened shipping container of  
8 cigarettes by a person who holds a business license endorsement under AS 43.70.075,  
9 is prima facie evidence of possession with intent to sell cigarettes. In this subsection,  
10 "display" means to openly exhibit.

11 **Sec. 43.50.670. Unauthorized transfer of unaffixed stamps.** (a) A licensee  
12 may not sell, exchange, or otherwise transfer stamps not affixed to a package of  
13 cigarettes in accordance with this chapter to another person without the prior written  
14 approval of the department.

15 (b) After notice and opportunity for a hearing, the department may assess a  
16 civil fine of not less than \$1,000 nor more than \$10,000 for a violation of (a) of this  
17 section. The fine assessed is in addition to any other penalty available under the law.

18 **Sec. 43.50.700. Definitions.** In AS 43.50.500 - 43.50.700, unless the context  
19 otherwise requires,

20 (1) "affiliated licensees" means two or more licensees in which the  
21 same person holds, directly or indirectly, at least a 50 percent ownership interest;

22 (2) "carton" means a box or container originating from the  
23 manufacturer that contains packages of that manufacturer's cigarettes;

24 (3) "cigarette" has the meaning given in AS 43.50.170;

25 (4) "licensee" means a person licensed by the department under  
26 AS 43.50.010 or 43.50.035 to sell, distribute, purchase, possess, or acquire cigarettes.

27 (5) "package" means the individual packet, box, or other container  
28 originating from the manufacturer, in which retail sales of cigarettes are normally  
29 made or intended to be made; "package" does not include containers that are cartons,  
30 cases, bales, or boxes that contain packages of cigarettes;

31 (6) "person" has the meaning given in AS 43.50.170;

1 (7) "shipping container" means the case, box, parcel, or other container  
 2 in which cartons or packages of cigarettes are placed for shipment or transportation  
 3 from one place to another; "shipping container" does not include a package in which  
 4 retail sales of cigarettes are normally made or intended to be made;

5 (8) "stamp" means a stamp or other indicium that is

6 (A) printed, manufactured, or made under authorization of the  
 7 department under this chapter;

8 (B) issued, sold, or circulated by the department; and

9 (C) used to pay the cigarette taxes levied under this chapter;

10 (9) "unstamped cigarettes" means a package containing cigarettes that  
 11 is not affixed with the stamp required by AS 43.50.500 - 43.50.700.

## 12 Article 6. Unfair Cigarette Sales.

13 **Sec. 43.50.710. Sale at less than cost; rebate in price.** (a) A wholesaler or  
 14 retailer may not, with intent to injure competitors or destroy or substantially lessen  
 15 competition,

16 (1) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at  
 17 less than actual cost to the wholesaler or retailer; or

18 (2) offer a rebate in price, give a rebate in price, offer a concession of  
 19 any kind, or give a concession of any kind or nature in connection with the sale of  
 20 cigarettes.

21 (b) A retailer may not induce or attempt to induce or procure or attempt to  
 22 procure

23 (1) the purchase of cigarettes at a price less than the actual cost to a  
 24 wholesaler;

25 (2) a rebate or concession of any kind or nature in connection with the  
 26 purchase of cigarettes.

27 (c) Evidence of advertisement, offering to sell, or sale of cigarettes by a  
 28 wholesaler or retailer at less than actual cost, or evidence of an offer of a rebate in the  
 29 price, the giving of a rebate in price, offer of a concession, or the giving of a  
 30 concession of any kind or nature in connection with the sale of cigarettes, or the  
 31 inducing, attempt to induce, the procuring, or the attempt to procure the purchase of

1 cigarettes at a price less than actual cost to a wholesaler or retailer is prima facie  
2 evidence of intent to injure competitors and to destroy or substantially lessen  
3 competition.

4 (d) A wholesaler or retailer who violates the provisions of this section is guilty  
5 of a class B misdemeanor.

6 **Sec. 43.50.720. Sale at less than cost; with gift or concession.** In all  
7 advertisements, offers for sale, or sales involving two or more items when at least one  
8 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,  
9 or sales involving the giving of any gift, concession, or coupon of any kind in  
10 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling  
11 price may not be below the actual cost to the wholesaler or the actual cost to the  
12 retailer, respectively, of the total of all articles, products, commodities, gifts, and  
13 concessions included in the transactions, except that, if any articles, products,  
14 commodities, gifts, or concessions are not cigarettes, the basic cost shall be  
15 determined as provided under AS 43.50.800.

16 **Sec. 43.50.730. Sale to another wholesaler.** When one wholesaler sells  
17 cigarettes to another wholesaler, the seller is not required to include the actual cost of  
18 the selling wholesaler. Upon resale to a retailer, the purchasing wholesaler is required  
19 to include the actual cost of the purchasing wholesaler or the actual cost of the selling  
20 wholesaler, whichever is greater, in the selling price.

21 **Sec. 43.50.740. Sales at price to meet competition.** (a) A wholesaler may  
22 advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price  
23 of a competitor who is rendering the same type of service and is selling the same  
24 article at cost to a competing wholesaler. A retailer may advertise, offer to sell, or sell  
25 cigarettes at a price made in good faith to meet the price of a competitor who is selling  
26 the same article at cost to a competing retailer.

27 (b) In the absence of proof of the actual cost to a competing wholesaler or the  
28 competing retailer, actual cost may be presumed to be the presumptive wholesale cost  
29 to the wholesaler or the presumptive retail cost to the retailer as determined by the  
30 department from the manufacturer's price list.

31 (c) A manufacturer whose product is sold in the state directly or through an

1 intermediary shall provide the department with a current price list for all brands of  
2 cigarettes of the manufacturer and shall notify the department at least 10 days before a  
3 price increase takes effect.

4 **Sec. 43.50.750. Contracts in violation of law are illegal.** A contract, express  
5 or implied, made by a person in violation of the provisions of AS 43.50.710 -  
6 43.50.849 is illegal and void.

7 **Sec. 43.50.760. Determination of cost.** (a) In determining actual cost to the  
8 wholesaler or retailer, a court shall consider as establishing the cost evidence tending  
9 to show that a wholesaler or retailer complained against under a provision of  
10 AS 43.50.710 - 43.50.849 purchased the cigarettes involved in the complaint at a  
11 fictitious price, or upon terms, in a manner, or under invoices, in a manner that  
12 conceals the true cost, discounts, or terms of purchase. The court shall also consider  
13 evidence of the normal, customary, and prevailing terms and discounts in connection  
14 with other sales of a similar nature in the state.

15 (b) The presumptive wholesale and presumptive retail cost of cigarettes as  
16 determined by the department from the manufacturer's price list is considered  
17 competent evidence in a court action or proceeding as tending to prove actual cost to  
18 the wholesaler or retailer complained against. A party against whom the presumptive  
19 wholesale or presumptive retail cost as determined by the department is introduced in  
20 evidence has the right to offer evidence tending to prove any inaccuracy of the  
21 presumptive wholesale or presumptive retail cost or any statement of facts that would  
22 impair its probative value.

23 **Sec. 43.50.770. Determination of cost of cigarettes purchased outside of**  
24 **ordinary channels of trade.** In establishing the basic cost of cigarettes to a  
25 wholesaler or retailer, the invoice cost or the actual cost of cigarettes purchased at a  
26 forced, bankrupt, or closeout sale, or other sale outside the ordinary channels of trade  
27 may not be used.

28 **Sec. 43.50.780. Injunction.** (a) The department or a person injured by a  
29 violation or who would suffer from any threatened violation of AS 43.50.710 -  
30 43.50.849 may maintain an action to prevent, restrain, or enjoin the violation or  
31 threatened violation. If, in the action, a violation or threatened violation of

1 AS 43.50.710 - 43.50.849 is established, the court may enjoin and restrain or  
 2 otherwise prohibit the violation or threatened violation, and the court shall assess the  
 3 costs of reasonable attorney fees against the defendant. In the action, it is not  
 4 necessary that actual damages to the plaintiff be alleged or proved, but, if actual  
 5 damages are alleged and proved, the plaintiff, in addition to injunctive relief and costs,  
 6 including reasonable attorney fees, may recover actual damages.

7 (b) If injunctive relief is not requested or required, a person injured by a  
 8 violation of AS 43.50.710 - 43.50.849 may maintain an action for damages in the  
 9 appropriate court.

10 **Sec. 43.50.790. Administration of AS 43.50.710 - 43.50.849.** (a) The  
 11 department

12 (1) shall administer AS 43.50.710 - 43.50.849;

13 (2) may adopt regulations relating to the administration and  
 14 enforcement of AS 43.50.710 - 43.50.849;

15 (3) may determine the basic cost of cigarettes to a wholesaler or  
 16 retailer from information obtained from a manufacturer;

17 (4) may, after reasonable notice and hearing, revoke or suspend a  
 18 license issued under AS 43.50.010 or 43.50.035 to a person who refuses or neglects to  
 19 comply with a provision of AS 43.50.710 - 43.50.849.

20 (b) The Department of Community and Economic Development may, after  
 21 reasonable notice and hearing, revoke or suspend a license issued under AS 43.70.075  
 22 to a person who refuses or neglects to comply with a provision of AS 43.50.710 -  
 23 43.50.849.

24 **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) For  
 25 purposes of AS 43.50.710 - 43.50.849,

26 (1) the basic cost of cigarettes is equal to the lower of the two  
 27 following amounts:

28 (A) the invoice cost of cigarettes to the wholesaler or retailer  
 29 less all trade discounts except customary discounts for cash, plus the full face  
 30 value of any tax that may be required by this chapter if not already included in  
 31 the invoice cost of the cigarettes to the wholesaler or retailer; or

1 (B) the lowest replacement cost of cigarettes to the wholesaler  
2 or retailer, within 30 days before the date of sale, in the quantity last  
3 purchased, within or before the 30-day period, less all trade discounts except  
4 customary discounts for cash, plus the full face value of any tax that may be  
5 required by this chapter if not already included in the invoice cost of the  
6 cigarettes to the wholesaler or retailer;

7 (2) the actual cost to the wholesaler is equal to the basic cost of the  
8 cigarettes acquired by the wholesaler plus the cost of doing business by the  
9 wholesaler, as evidenced by the standards and methods of accounting regularly  
10 employed by the wholesaler, and includes labor costs, rent, depreciation, selling costs,  
11 maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and  
12 advertising;

13 (3) in the absence of proof of a lesser or higher cost of doing business  
14 by the wholesaler making the sale, the cost of doing business by the wholesaler is  
15 presumed to be four and one-half percent of the basic cost of the cigarettes to the  
16 wholesaler; a fraction of a cent used in computing the cost of doing business shall be  
17 rounded off to the next highest cent;

18 (4) the actual cost to the retailer is equal to the basic cost of the  
19 cigarettes plus the cost of doing business by the retailer; the cost of doing business  
20 may be proven by the standards and methods of accounting regularly employed by the  
21 retailer and must include labor costs, rent, depreciation, selling costs, maintenance of  
22 equipment, delivery costs, all types of licenses, taxes, insurance, and advertising;

23 (5) in the absence of proof of a lesser or higher cost of doing business  
24 by the retailer making the sale, the cost of doing business by the retailer is presumed to  
25 be six percent of the basic cost of cigarettes to the retailer; a fraction of a cent used in  
26 computing the cost of doing business shall be rounded off to the next highest cent.

27 (b) In the absence of proof of a lesser or higher actual cost to the

28 (1) wholesaler, the actual cost is presumed to be the presumptive  
29 wholesale cost as determined by the department; and

30 (2) retailer, the actual cost is presumed to be the presumptive retail  
31 cost as determined by the department.

1 (c) In the absence of the manufacturer's list price for a particular brand of  
2 cigarettes, the department may determine the presumptive wholesale cost or the  
3 presumptive retail cost of the cigarettes from the average price of cigarettes for other  
4 similar brands for which the department has the manufacturer's list price.

5 **Sec. 43.50.849. Definitions.** In AS 43.50.710 - +3.50.849,

6 (1) "basic wholesale cost" means the manufacturer's list price less trade  
7 discounts, except discounts for cash, plus the full face value of any tax required by this  
8 chapter;

9 (2) "cigarette" has the meaning given in AS 43.50.170;

10 (3) "department" means the Department of Revenue;

11 (4) "direct-buying retailer" has the meaning given in AS 43.50.170;

12 (5) "person" has the meaning given in AS 43.50.170;

13 (6) "presumptive retail cost" means the presumptive wholesale cost  
14 plus six percent of the presumptive wholesale cost;

15 (7) "presumptive wholesale cost" means the basic wholesale cost plus  
16 four and one-half percent of the basic wholesale cost;

17 (8) "retailer" has the meaning given in AS 43.50.170 and includes a  
18 person licensed or required to be licensed as a direct-buying retailer under this chapter  
19 and a person who holds or is required to hold a license endorsement under  
20 AS 43.70.075;

21 (9) "sale" has the meaning given in AS 43.50.170;

22 (10) "sell at retail," "sale at retail," or "retail sales" means a sale for  
23 consumption or use made in the ordinary course of trade or usual conduct of the  
24 seller's business;

25 (11) "sell at wholesale," "sale at wholesale," or "wholesale sales"  
26 means a sale made in the ordinary course of trade or usual conduct by a wholesaler to  
27 a retailer for the purpose of resale;

28 (12) "trade discount" means a price reduction that is offered by a  
29 cigarette manufacturer on the date of sale, is reflected on the invoice as a deduction  
30 from the manufacturer's list price, and is fully earned and determinable on the date of  
31 sale;



1 (13) "wholesaler" means a person licensed or required to be licensed  
2 under AS 43.50.010 or AS 43.50.035 and who sells cigarettes to a retailer for the  
3 purpose of resale.

4 \* **Sec. 18.** AS 43.50.080 is repealed.

5 \* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 **TRANSITION: REGULATIONS.** Notwithstanding sec. 22 of this Act, the  
8 Department of Revenue may immediately proceed to adopt regulations necessary to  
9 implement the changes made by this Act. The regulations take effect under AS 44.62  
10 (Administrative Procedure Act), but not before the effective date of the respective statutory  
11 changes.

12 \* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 **TRANSITION: ACTIVITIES INVOLVING UNSTAMPED CIGARETTES**  
15 **THROUGH MARCH 31, 2004.** (a) Notwithstanding the requirements of AS 43.50.500 -  
16 43.50.700, enacted by sec. 17 of this Act, a person may acquire, hold, own, import, possess,  
17 sell, distribute, or consume unstamped cigarettes in this state on or after January 1, 2004, and  
18 on or before March 31, 2004, if the cigarettes were in this state before January 1, 2004.

19 (b) In this section, "unstamped cigarettes" has the meaning given in AS 43.50.700,  
20 enacted by sec. 17 of this Act.

21 \* **Sec. 21.** Section 19 of this Act takes effect immediately under AS 01.10.070(c).

22 \* **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect January 1, 2004.

ADOPTED

Senate Amendment

SENATE FINANCE  
COMMITTEE #1  
Amendment Number: #1  
Bill Number: SB 1168  
Sponsor: Bunde Date: 5/2/03  
Logged In By: Robin

By: Senator Bunde

To: CSSB 168 (L&C) Version Q

Page 21, line 28

Insert:

(12) "trade discount" means a price reduction that is offered by a cigarette manufacturer on the date of sale, is reflected on the invoice as a deduction from the manufacturer's list price and is fully earned and determinable on the date of sale.

Renumber subsections accordingly



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: Mon 5/5/03 TIME: 11:25 AM

TO: LEGAL

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: ROBIN PAUL  
SENATE FINANCE CMTE. ASST. SECRETARY  
PHONE: 465-2618  
FAX: 465-2187

NOTES: Need a Final Please  
with the attached Amendment  
incorporated.  
Final for CS SB 1108 (FIN)  
with amendment #1  
incorporated into CS SB 1108 (L&C) Version  
Q

*Thank you!  
Robin*

CS FOR SENATE BILL NO. 168(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to issuance and revocation of licenses for the importation, sale,  
2 distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund  
3 or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions  
4 on and penalties for shipping or transporting cigarettes; relating to records concerning  
5 the sale of cigarettes; amending and adding definitions relating to cigarette taxes;  
6 relating to the payment of cigarette taxes; relating to penalties applicable to cigarette  
7 taxes; relating to the definition of the wholesale price of tobacco products; relating to  
8 payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions  
9 making certain cigarettes contraband and subject to seizure and forfeiture; relating to  
10 certain crimes, penalties, and interest concerning tobacco taxes and stamps; relating to  
11 cigarette sales; and providing for an effective date."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

1 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
2 to read:

3 **SHORT TITLE.** AS 43.50.710 - 43.50.849, enacted in sec. 17 of this Act, may be  
4 known as the Unfair Cigarette Sales Act.

5 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 **INTENT OF AS 43.50.710 - 43.50.849.** It is the intent of AS 43.50.710 - 43.50.849,  
8 enacted in sec. 17 of this Act, to

9 (1) encourage fair and honest competition and to safeguard the public against  
10 unfair, dishonest, deceptive, destructive, and fraudulent business practices existing in  
11 transactions involving the sale of, offer to sell, or inducement to sell cigarettes in the  
12 wholesale and retail trades in the state;

13 (2) prohibit the advertising, offering for sale, or sale of cigarettes below cost  
14 in the wholesale or retail trades with the intent of injuring competitors or destroying or  
15 substantially lessening competition as an unfair and deceptive trade practice; and

16 (3) promote the general welfare and public interest through the prohibition of  
17 unfair cigarette sales.

18 \* **Sec. 3.** AS 43.50.035 is amended to read:

19 **Sec. 43.50.035. Wholesaler-distributor license.** A person outside of this  
20 state who sells cigarettes into this state and is not required to be licensed under  
21 AS 43.50.010 may apply [QUALIFY] for a wholesaler-distributor license [BY  
22 FURNISHING A GOOD AND SUFFICIENT SURETY BOND IN AN AMOUNT  
23 EQUAL TO TWICE THE AVERAGE MONTHLY RETURN AND IN NO CASE  
24 LESS THAN \$5,000, PAYABLE TO THE DEPARTMENT AND APPROVED BY  
25 THE DEPARTMENT OF LAW. IF A WHOLESALER-DISTRIBUTOR FAILS TO  
26 PAY THE CIGARETTE TAX WHEN DUE, THE BOND MAY BE FORFEITED  
27 AND THE LICENSE REVOKED]. The department shall adopt reasonable  
28 regulations necessary for the collection of cigarette taxes on cigarette sales made  
29 by the [MAY ISSUE PERMITS IN PLACE OF BONDS TO RESIDENT HOLDERS  
30 OF] wholesaler-distributor licensee into this state and standards for

31 (1) application and issuance of the license; and

1                   (2) refusal to issue the license [LICENSES DOING BUSINESS  
2                   WHOLLY IN THE STATE WHO PAY THE TAX BEFORE SHIPMENT].

3 \* Sec. 4. AS 43.50.040 is amended to read:

4                   Sec. 43.50.040. Expiration of licenses. A license issued under AS 43.50.010  
5                   or 43.50.035 expires on June 30 [,] following the date of issue. If a license is revoked,  
6                   or the business for which the license is issued changes ownership or the licensee  
7                   changes the place of business from the premises covered by the license, the licensee  
8                   shall immediately return the license to the department. If the licensee moves the  
9                   business to another location in the state, the license shall, upon the payment of a fee of  
10                  50 cents, be reissued for the new location for the balance of the unexpired term.  
11                 Before a license issued under AS 43.50.010 or 43.50.035 expires, the [THE]  
12                 licensee may apply to [, ON APPLICATION TO THE DEPARTMENT  
13                 ACCOMPANIED BY THE RENEWAL FEE, MAY, BEFORE THE EXPIRATION  
14                 OF THE LICENSE,] renew the license for one year from the expiration date of the  
15                 license. The renewal fee required by AS 43.50.030 must accompany the  
16                 application. The department shall adopt reasonable regulations that it considers  
17                 necessary regarding the renewal of licenses.

18 \* Sec. 5. AS 43.50.070 is amended to read:

19                 Sec. 43.50.070. Suspension or revocation of or refusal to renew a license  
20                 [REVOCAION OF LICENSES]. The department may suspend, [OR] revoke, or  
21                 refuse to renew a license issued under this chapter [AS 43.50.010 - 43.50.180] (1)  
22                 for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of this  
23                 chapter [AS 43.50.010 - 43.50.180] or a regulation of the department adopted under  
24                 this chapter [AS 43.50.010 - 43.50.180]; (2) if a licensee ceases to act in the capacity  
25                 for which the license was issued; or (3) if a licensee [MANUFACTURER,  
26                 DISTRIBUTOR, OR WHOLESALE DISTRIBUTOR] negligently sells tobacco or  
27                 products containing tobacco to a person who is required to, but does not, hold a  
28                 license endorsement under AS 43.70.075 or [NONLICENSED RETAILER OR A  
29                 RETAILER] whose license endorsement under AS 43.70.075 has been suspended. A  
30                 person whose license is suspended or revoked may not sell cigarettes or tobacco  
31                 products, or permit cigarettes or tobacco products to be sold, during the period of

1 the suspension or revocation on the premises occupied or controlled by that person. A  
 2 disciplinary proceeding or action is not barred or abated by the expiration, transfer,  
 3 surrender, renewal, or extension of a license issued under this chapter [AS 43.50.010  
 4 - 43.50.180]. The department shall comply with the provisions of AS 44.62 ( [THE]  
 5 Administrative Procedure Act), except that a hearing officer of the department,  
 6 rather than a hearing officer assigned under AS 44.62.350, may conduct hearings  
 7 [(AS 44.62)].

8 \* Sec. 6. AS 43.50.070 is amended by adding a new subsection to read:

9 (b) In this section, "licensee" means a person licensed under AS 43.50.010 -  
 10 43.50.180 or 43.50.300 - 43.50.390.

11 \* Sec. 7. AS 43.50.090(a) is amended to read:

12 (a) There is levied an excise tax of 38 mils on each cigarette imported or  
 13 acquired in the state. The tax shall be paid through the use of stamps as provided  
 14 in AS 43.50.500 - 43.50.700. The failure to pay the tax through the use of stamps  
 15 does not relieve a person of the obligation to pay taxes due under this chapter.  
 16 The person shall still pay the tax, and the tax is due on or before the end of the  
 17 month following the month in which cigarettes were manufactured, imported,  
 18 acquired, or sold in this state [EACH LICENSEE SHALL, AT THE TIME OF  
 19 FILING THE RETURN REQUIRED BY AS 43.50.080, PAY TO THE  
 20 DEPARTMENT THE EXCISE FOR THE CALENDAR MONTH COVERED BY  
 21 THE RETURN, DEDUCTING FOUR-TENTHS OF ONE PERCENT OF THE  
 22 TOTAL TAX DUE, WHICH THE LICENSEE SHALL RETAIN TO COVER THE  
 23 EXPENSE OF ACCOUNTING AND FILING RETURNS]. Cigarettes upon which  
 24 the excise is imposed are not again subject to the excise when acquired by another  
 25 person.

26 \* Sec. 8. AS 43.50.100(d) is amended to read:

27 (d) A person or licensee who is in control or possession of cigarettes contrary  
 28 to this chapter [AS 43.50.010 - 43.50.180,] or who offers to sell or dispose of  
 29 cigarettes to others for the purpose of resale without being licensed to do so is  
 30 considered to have possession of the cigarettes as a consumer and is personally liable  
 31 for the cigarette taxes imposed by this chapter [TAX], plus a penalty of 100 percent

1 [PER CENT].

2 \* **Sec. 9.** AS 43.50 is amended by adding a new section to read:

3 **Sec. 43.50.105. Restrictions on shipping or transporting cigarettes.** (a) A  
4 person who is not licensed under this chapter may not ship or cause to be shipped  
5 cigarettes to a person in this state unless the person receiving the cigarettes is

6 (1) licensed under this chapter;

7 (2) an operator of a customs bonded warehouse under 19 U.S.C. 1311  
8 or 19 U.S.C. 1555; or

9 (3) an instrumentality of the federal government or an Indian tribal  
10 organization authorized by law to possess cigarettes not taxed under this chapter.

11 (b) A person who is licensed under this chapter may not ship or cause to be  
12 shipped cigarettes to a person in this state unless the person receiving the cigarettes

13 (1) is licensed under this chapter;

14 (2) holds a tobacco endorsement under AS 43.70.075;

15 (3) is an operator of a customs bonded warehouse under 19 U.S.C.  
16 1311 or 19 U.S.C. 1555; or

17 (4) is an instrumentality of the federal government or an Indian tribal  
18 organization authorized by law to possess cigarettes not taxed under this chapter.

19 (c) A common or contract carrier may not knowingly transport cigarettes to a  
20 person in this state unless the person

21 (1) shipping the cigarettes is licensed under this chapter and provides  
22 the common or contract carrier with a copy of the person's current license issued by  
23 the department and the person receiving the cigarettes is a person described under  
24 (b)(1) - (4) of this section; or

25 (2) receiving the cigarettes is a person described under (a)(2) or (3) of  
26 this section or is licensed under this chapter and provides the common or contract  
27 carrier with a copy of the person's current license issued by the department.

28 (d) If the cigarettes are transported by a common or contract carrier to a home  
29 or residence, it is rebuttably presumed that the common or contract carrier knew that  
30 the person receiving the cigarettes was not a person described under (b)(1) - (4) of this  
31 section.



1 (e) A person, other than a common or contract carrier, may not knowingly  
2 transport cigarettes to a person in this state, unless the person receiving the cigarettes  
3 is a person described under (b)(1) - (4) of this section.

4 (f) A person who ships or causes to be shipped cigarettes to a person in this  
5 state shall plainly and visibly mark the container or wrapping with the word  
6 "cigarettes" if the cigarettes are shipped in a container or wrapping other than the  
7 cigarette manufacturer's original container or wrapping.

8 (g) A person who violates the provisions of this section is guilty of a

9 (1) class A misdemeanor if the person unlawfully ships, causes to be  
10 shipped, or transports at least one but fewer than 1,000 cigarettes;

11 (2) class C felony if the person unlawfully ships, causes to be shipped,  
12 or transports 1,000 or more cigarettes.

13 (h) In addition to the criminal penalty under (g) of this section, the department  
14 may assess a civil fine of not more than \$5,000 for each violation of this section.

15 \* Sec. 10. AS 43.50.130(d) is amended to read:

16 (d) An invoice for the sale of cigarettes given or accepted by a licensee under  
17 this chapter [AS 43.50.010 - 43.50.180] must state whether the taxes [TAX] imposed  
18 by this chapter have [AS 43.50.010 - 43.50.180 HAS] been paid.

19 \* Sec. 11. AS 43.50.170(7) is amended to read:

20 (7) "person" includes an individual, company, partnership, limited  
21 liability partnership, joint venture, joint agreement, limited liability company,  
22 association, mutual or otherwise, corporation, estate, trust, business trust, receiver,  
23 trustee, syndicate, or political subdivision of this state, or combination acting as a unit;

24 \* Sec. 12. AS 43.50.170 is amended by adding new paragraphs to read:

25 (11) "tobacco product" has the meaning given in AS 43.50.390;

26 (12) "wholesaler-distribut..." means a person outside this state who  
27 sells or distributes cigarettes into this state and who is not required to be licensed  
28 under AS 43.50.010.

29 \* Sec. 13. AS 43.50.190(b) is amended to read:

30 (b) The tax levied by this section is in addition to the tax levied by  
31 AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same

1 manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the  
 2 tax shall be deposited in the general fund. The penalties provided in AS 43.05 and  
 3 this chapter apply to the tax levied in this section.

4 \* **Sec. 14.** AS 43.50.320(f) is amended to read:

5 (f) The department may suspend, [OR] revoke, or refuse to renew a license  
 6 issued under this section as provided in AS 43.50.070 [IF THE LICENSEE  
 7 VIOLATES A PROVISION OF AS 43.50.300 - 43.50.390 OR A REGULATION  
 8 ADOPTED UNDER AS 43.50.370].

9 \* **Sec. 15.** AS 43.50 is amended by adding a new section to read:

10 **Sec. 43.50.335. Tax credits and refunds.** The department shall adopt  
 11 procedures for a refund or credit to a licensee of the tax paid for tobacco products that  
 12 have become unfit for sale, are destroyed, or are returned to the manufacturer for  
 13 credit or replacement if the licensee provides proof acceptable to the department that  
 14 the tobacco products have not been and will not be consumed in this state.

15 \* **Sec. 16.** AS 43.50.390(5) is repealed and reenacted to read:

16 (5) "wholesale price" means

17 (A) the established price for which a manufacturer sells a  
 18 tobacco product to a distributor after deduction of a discount or other reduction  
 19 received by the distributor for quantity or cash if the manufacturer's established  
 20 price is adequately supported by bona fide arm's length sales as determined by  
 21 the department; or

22 (B) the price, as determined by the department, for which  
 23 tobacco products of comparable retail price are sold to distributors in the  
 24 ordinary course of trade if the manufacturer's established price does not meet  
 25 the standards of (A) of this paragraph.

26 \* **Sec. 17.** AS 43.50 is amended by adding new sections to read:

27 **Article 5. Cigarette Tax Stamps.**

28 **Sec. 43.50.500. Tax payment by use of stamps.** A licensee shall pay the tax  
 29 imposed under AS 43.50.090(a) and 43.50.190(a) through the use of stamps issued  
 30 under AS 43.50.500 - 43.50.700.

31 **Sec. 43.50.510. Stamp design; manner of affixing.** (a) The department shall

1 design and furnish stamps of sizes and denominations as determined by the  
2 department.

3 (b) Notwithstanding the packaging requirements of AS 43.70.075(g)(1), a  
4 stamp required under AS 43.50.500 - 43.50.700 must be affixed

5 (1) on the smallest package that will be handled, sold, used, consumed,  
6 or distributed in this state; and

7 (2) in a denomination equal to the amount of tax due under this chapter  
8 on the cigarettes in the package.

9 (c) A stamp required under AS 43.50.500 - 43.50.700 shall be affixed to the  
10 bottom of each individual package of cigarettes in a manner so that the stamp cannot  
11 be removed from the package without being mutilated or destroyed.

12 (d) For purposes of this section, a stamp is considered affixed only if more  
13 than 80 percent of the stamp is attached to the individual package in accordance with  
14 (c) of this section and regulations adopted by the department.

15 **Sec. 43.50.520. Stamp required before sale, distribution, or consumption.**

16 (a) Except as provided in AS 43.50.580, a licensee or the authorized agent or designee  
17 of the licensee shall affix a stamp, in the manner required by AS 43.50.510, to each  
18 package of cigarettes immediately upon the opening of the shipping container  
19 containing the package and before sale, distribution, or consumption in this state.

20 (b) Except as provided in AS 43.50.580 and 43.50.610, a person may not  
21 engage in the following activities in this state unless the package containing the  
22 cigarettes is affixed with the required stamp:

23 (1) sell or distribute cigarettes to a person who is a consumer in this  
24 state;

25 (2) acquire, hold, own, possess, or transport cigarettes for sale or  
26 distribution in this state;

27 (3) import or cause to be imported cigarettes into this state for sale,  
28 distribution, or consumption; or

29 (4) place or store cigarette packages in a vending machine in this state.

30 **Sec. 43.50.530. Sale of stamps.** (a) The department shall furnish stamps for  
31 sale to licensees.

1 (b) The department may enter into agreements with financial institutions to  
2 permit the sale of stamps by those institutions. The department shall make a list of  
3 financial institutions authorized to sell stamps under this section available to the  
4 public.

5 **Sec. 43.50.540. Purchase of and payment for stamps.** (a) A licensee shall  
6 apply to the department or a financial institution authorized under AS 43.50.530(b) to  
7 purchase stamps required by AS 43.50.500 - 43.50.700.

8 (b) A licensee may authorize an agent or designee to purchase stamps for the  
9 licensee at a location where stamps are sold. The licensee's authorization of an agent  
10 or designee must be in writing and must be signed by the licensee. The licensee shall  
11 provide a copy of the authorization to the department. The authorization continues in  
12 effect until the department receives the licensee's written notice of revocation of the  
13 authorization.

14 (c) Except as otherwise provided in this subsection, each stamp shall be sold  
15 to a licensee at its denominated value less the discount provided in this subsection.  
16 The discount under this subsection is provided as compensation for affixing stamps to  
17 packages as required by AS 43.50.500 - 43.50.700. The department may reduce or  
18 eliminate the discount to a licensee under this subsection if the licensee fails to meet  
19 the requirements of AS 43.50.500 - 43.50.700. The discount under this subsection is  
20 equal to the sum of the amounts calculated using the following percentages of  
21 denominated value of stamps purchased by a licensee under this section in a calendar  
22 year:

23 (1) \$1,000,000 or less, three percent;

24 (2) the amount that is more than \$1,000,000 but not more than  
25 \$2,000,000, two percent;

26 (3) the amount that is over \$2,000,000, zero percent.

27 (d) Payment for stamps shall be made at the time of purchase, except that the  
28 department may permit a licensee to defer payments as provided in AS 43.50.550.

29 (e) The licensee or the licensee's agent or designee must obtain the stamps in  
30 person from the department or a financial institution authorized to sell stamps under  
31 AS 43.50.530(b). Alternatively, the licensee may request in writing that the stamps be

1 shipped or transported in a manner specified by the licensee that is acceptable to the  
2 department. The department may accept only United States mail or common or  
3 private carrier as a shipping or transportation method.

4 (f) Title to the stamps passes immediately to the licensee at the time the  
5 stamps are obtained in person or, if the stamps are shipped or transported, at the time  
6 the stamps are placed in the United States mail or received by the common or private  
7 carrier. The licensee bears all costs associated with shipping or transporting the  
8 stamps and all risks of possible loss or damage while in transit.

9 (g) Loss, destruction, or theft of stamps does not absolve the licensee of its  
10 obligation to make payment for the stamps, including payment on a deferred-payment  
11 basis under AS 43.50.550.

12 (h) For purposes of the discount provided in (c) of this section, "stamps  
13 purchased by a licensee" includes stamps purchased by affiliated licensees.

14 **Sec. 43.50.550. Deferred-payment basis for stamps.** (a) A licensee may  
15 apply to the department to purchase stamps on a deferred-payment basis. Upon  
16 receipt of the application and the bond required under (b) of this section, the  
17 department may set the maximum dollar amount of stamps that the licensee is  
18 authorized to purchase on a deferred-payment basis in a calendar month.

19 (b) A licensee who submits an application for the purchase of stamps on a  
20 deferred-payment basis shall post a bond acceptable to the department in an amount  
21 equal to 200 percent of the maximum dollar amount of allowed monthly purchases  
22 under this section as a condition of approval of the application.

23 (c) Amounts owing for stamps purchased on a deferred-payment basis in a  
24 calendar month are due on or before the last day of the next calendar month. Payment  
25 shall be made by a remittance acceptable to the department that is made payable to the  
26 department.

27 (d) The department may designate the sales locations where the licensee may  
28 make purchases of stamps on a deferred-payment basis and fix the dollar amount of  
29 purchases that the licensee may make under this section at each designated sales  
30 location each month.

31 **Sec. 43.50.560. Suspension of deferred-payment basis privilege.** The